Supreme Court, U.S.
FILED

961904 MAY 30 1997

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

Margarita Lopez and Luis Garden Acosta
Appellants,

vs.

ANGEL DIAZ, et al.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

JUAN CARTAGENA
Counsel of Record
JENNIFER MODELL
COMMUNITY SERVICE SOCIETY OF NEW YORK
105 East 22nd Street
New York, NY 10010
(212) 254-8900

JUAN FIGUEROA
PUERTO RICAN LEGAL DEFENSE & EDUCATION FUND
99 Hudson Street
New York, NY 10013
(212) 219-3360
Attorneys for Appellants Luis Garden Acosta & Margarita Lopez

QUESTIONS PRESENTED

1. Is summary judgment appropriate in a Shaw challenge where the District Court ascribes to the Legislature the racial motives of third-parties, without an evidentiary hearing, in the face of affidavits from the two main legislative leaders that raised incumbency protection as the primary motive of the law and where the intervenors preserved their right to discovery?

2. Is there a federal common law of compactness which limits a State Legislature's authority to create majority-minority districts in a manner that is more restrictive than permitted by State law and the State's own traditional compactness practices?

3. May a federal District Court ignore a judgment of a State court on a question of state law, i.e. whether a Congressional district was in accord with State constitutional and State redistricting criteria, and point to federal law to outlaw a district because it fails to meet an alleged compactness standard under Section 2 of the Voting Rights Act and because it allegedly does not preserve a community of interest?

4. May a State Legislature rely on a State Court decision which held that the its districting plan was valid under federal and state constitutions and the Voting Rights Act, as strong evidence that its district was narrowly tailored to meet a compelling state interest?

LIST OF PARTIES

The APPELLANTS are Luis Garden Acosta and Margarita Lopez, Defendants-Intervenors below.

Defendants below are: Sheldon Silver, the Assembly of the State of New York; Joseph L. Bruno, Majority Leader of the New York State Senate; George E. Pataki, Governor of the State of New York; Owen T. Smith, Evelyn J. Aquiler, and Helena M. Donhue, Commissioners of the New York State Board of Elections; the Board of Elections of the State of New York; John Does 1 through 50, persons responsible in their official capacities for the enforcement of the legislation that created New York's federal congressional districts the names of which are unknown to plaintiffs.

Other Defendant-Intervenors below are Rep. Nydia Velazquez; Rep. Major R. Owens; Marshall Dubin; Asquith Reid; Evy Papillon-Juste; William Abrams; Anella C. Johnson; Rep. Carolyn B. Maloney; Peter Lau; John Kuo Wei.

The APPELLEES are Angel Diaz, Denise L. Motley, Reynaldo Coholo, PLAINTIFFS below; and Delco L. Cornett, PLAINTIFF-INTERVENOR below.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED.....ii
LIST OF PARTIES.....iii
TABLE OF CONTENTS..... iv
TABLE OF AUTHORITIES..... vi
OPINION BELOW..... 2
JURISDICTION..... 2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....2
STATEMENT OF THE CASE..... 3

THE QUESTIONS PRESENTED ARE SUBSTANTIAL.....11

I. SUMMARY JUDGMENT IS INAPPROPRIATE IN A SHAW CHALLENGE WHERE THE DISTRICT COURT ASCRIBES RACIAL MOTIVES OF THIRD PARTIES TO THE LEGISLATURE IN THE FACE OF DIRECTLY CONFLICTING EVIDENCE OF OTHER MOTIVES FROM LEGISLATIVE LEADERS; ACCORDINGLY STRICT SCRUTINY CANNOT BE APPLIED.....11

1. Race was Not the Predominant Motivation Nor the But For Cause for the Legislature's Adoption of the Twelfth Congressional District.....13

2. Summary Judgment was Especially Prejudicial to the Lopez Intervenors Who Sought to Preserve their Rights to Discovery.....16

II. STRICT SCRUTINY IS INAPPROPRIATE IN A SHAW CHALLENGE TO A DISTRICT WHICH WHILE ADMITTEDLY IRREGULAR IN SHAPE IS CONSISTENT WITH LOCAL COMPACTNESS PRACTICES AND THEREFORE EXPLICABLE ON GROUNDS OTHER THAN RACE.....17

1. Traditional Redistricting Criteria Must Turn on State based Reference Points 18

A. Section 2 Of The Voting Rights Act Does Not Create a Federal Common Law of Compactness.. 20

B. The District Court Erred In Finding The Twelfth Congressional District Is Not Accord With New York Law And Its Traditional And Customary Compactness Practices.....22

C. State Law Is Determinative on the Question of Preserving Communities of Interest.....26

III. IF STRICT SCRUTINY WERE TO APPLY, THE STATE HAD STRONG EVIDENCE THAT THE CREATION OF THE TWELFTH CONGRESSIONAL DISTRICT WAS NARROWLY TAILORED TO COMPLY WITH SECTION 2 OF THE VOTING RIGHTS ACT 28

CONCLUSION.....30

APPENDIX.....A-1

TABLE OF AUTHORITIES

CASES

Anderson v. Liberty Lobby Inc. 477 U.S. 242, 91 L. Ed. 2d 202 (1986).....11

Arlington Heights v. Metro Housing Development Corporation, 429 U.S. 252 (1977).....12, 15

Bush v. Vera, 517 U.S. _, 135 L.Ed 2d 248 (1996).....*passim*

Carstens v. Lamm, 543 F.Supp. 68 (D.Colo. 1982).....27

Celotex Corp. V. Catrett, 477 U.S. 317, 91 L.Ed 2d 265 (1986).....11, 17

Gaffney v. Cummings, 412 U.S. 735 (1973).....20

Growe v. Emison, 507 U.S. 25, 122 L.Ed. 2d 388 (1993).....29

Miller v. Johnson, 515 U.S. ___, 115 S.Ct. 2475, 132 L.Ed 2d 762 (1995).....*passim*

Personnel Adm'r of Mass. v. Feeney, 442 U.S. 256 (1979).....14

PRLDEF v. Gantt, 796 F. Supp. 681 (E.D.N.Y. 1992), vacated as moot, 506 U.S. ___, 121 L.Ed. 2d 3(1992).....3, 5, 7, 8

Reid v. Marino, No. 9567-92 (N.Y.Sup. Ct. Kings Cty. 1992).....*passim*

Reno v. Bossier Parish School Board, __U.S.__, 65 U.S. Law Week 4308 (13 May 1997).....12

Schneider v. Rockefeller, 31 N.Y. 2d 420, 340 N.Y.S.2d 889, 293 N.E.2d 67 (1972).....24

Shaw v. Hunt, 517 U.S. _, 116 S.Ct. 1894, 135 L.Ed. 2d 207 (1996).....12,14,15

Shaw v. Reno, 509 U.S. 630, 125 L.Ed.2d 511 (1993).....12, 20, 28

Thornburg v. Gingles, 478 U.S. 30 (1986).....7

Voinovich v. Quilter, 507 U.S. 146 (1993).....22

Wilson v. Eu, 1 Cal. 4th 707, 823 P.2d 545 (Cal. 1992)...27

Wright v. Rockefeller, 376 U.S. 52 (1964).....26

STATUTES AND CONSTITUTIONAL PROVISIONS

42 U.S.C. § 1973.....2
42 U.S.C. § 1973b 2
42 U.S.C. § 1973c.....2
42 U.S.C. § 1973l 2
FED. R. CIV. P. 56 .....11, 17

OTHER AUTHORITIES

Neimi, Richard G. and Pildes, Richard H., "Expressive Harms, Bizarre District and Voting Rights: Evaluating Election - District Appearances After Shaw v. Reno."92 Mich. L. Rev. 483 (1993).....26

Schwarzer, William W., "Summary Judgment Under the Federal Rules: Defining Genuine Issues of Material Fact," 99 F.R.D. 465 (1984).....12

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

SHELDON SILVER, et al.,

Appellants,

vs

ANGEL DIAZ, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

Appellants Margarita Lopez and Luis Garden Acosta (Lopez Intervenors) appeal from the final judgment entered by the United States District Court for the Eastern District of New York, enjoining New York's congressional districting plan.

OPINION BELOW

The Memorandum and Order of February 26, 1997, issued by the three-judge court in Angel Diaz vs. Sheldon Silver, 92-CV-2591 (JMM,SJ,DGT) and filed in the United States District Court on February 27, 1997, and the judgment entered on February 28, 1997, have not been reported. They are reprinted in the Appendix of Appellant Sheldon Silver (hereinafter "Silver App.") at A-1 to A-80.

JURISDICTION

The final judgment appealed from herein was entered February 28, 1997. Silver App. at A-78 to A-80. A notice of appeal to this Court was timely filed on March 31, 1997 by Defendant - Intervenors Margarita Lopez and Luis Garden Acosta. App. 1[1] The jurisdiction of this Court to review the three-judge court judgment is invoked under 28 U.S.C. §1253.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Equal Protection Clause of the Fourteenth Amendment provides: "[N]o State shall . . . deny to any person within its jurisdiction the equal protection of the law;" Section I of the Fifteenth Amendment provides: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude." Sections 2 and 5 of the Voting Rights Act, 42 U.S.C. §§1973 and 1973c, and pertinent portions of section 4 and section 14 of the Voting Rights Act, 42 U.S.C. §§1973b and 1973l, are set out in the Silver Appendix (Silver App. A-83 to A-85). Chapter 138 of the New York State Laws of 1992 is the redistricting statute challenged by the plaintiffs herein.

---

[1] References to "App." are to the Lopez Intervenor's Appendix to this Jurisdictional Statement.

STATEMENT OF THE CASE

This case was brought by plaintiffs Angel Diaz, et al., in June 1995, to declare New York's Twelfth Congressional district unconstitutional, because it was allegedly an unconstitutional, race-based district.

Subsequent to its becoming law in 1992, the Twelfth Congressional district became one of only three Congressional Districts in the United States to elect a Puerto Rican to the United States House of Representatives and the only one to elect a Puerto Rican woman.

History of the Adoption of the Twelfth Congressional District

1. Background

Based upon 1990 census figures, the number of House seats to be apportioned to the State of New York was reduced to 31 from 34. As a result, New York's congressional seats had to be reapportioned prior to the September 1992 primary and the November 1992 election.

As a consequence of the Legislature's inaction and the impending candidate qualification period, actions were filed in both State and federal court challenging the then current, New York congressional plan. The state court action, Reid v. Marino, No. 9567-92, was filed in the Supreme Court of New York for Kings County. The federal action, PRLDEF v. Gantt, No. CV-92-1521 (SJ), was filed in the United States District Court for the Eastern District of New York. PRLDEF plaintiffs alleged that New York's then existing congressional map denied Latino voters their right to vote in violation of constitutional and statutory guarantees.

2. State Court Decision and Process

The State Supreme Court in Reid ordered the State Legislature to enact a 31-district congressional redistricting plan

by May 4, 1992. The Legislature did not enact a 31-district congressional redistricting plan by May 4, 1992.

By order dated May 5, 1992, the Reid court appointed three referees to assist it in the formulation of a plan, and ordered the referees to hold hearings and prepare a reapportionment plan which would reduce the number of New York Congressional Districts from 34 to 31 and conform with both state and federal constitutional mandates.

The Referees adopted a plan that included the Twelfth Congressional District.[2]

The Referees indicated at page 2 of their Final Report, that: "[T]he methodologies to assure full compliance with the Voting Rights Act and the constitutional equal protection standards [had] been incorporated as elements in the judgments reached by the referees." The Final Report of the referees also reviewed other applicable criteria including, inter alia, contiguity, compactness, respect for traditional boundaries (such as county lines), communities of interest and political fairness.

The Referees stated that their plan was drawn to comply with section 2 of the Voting Rights Act. They then reviewed the legal requirements of section 2:

> In order to withstand a challenge under Section 2 of the Act, a court-drawn redistricting plan must be crafted so as not to dilute the voting strength of racial and language minority voters. . . We caused to be conducted a preliminary analysis of voter turnout data and registration by race to determine first, whether racial bloc voting could occur in the minority districts proposed and second, whether the proposed districts were sufficiently large enough to allow minorities to elect the candidate of

---

[2] Final Report of the Referees, dated 4 June 1992. App. at A-51. Filed below as Exhibit C to the Affirmation of Arthur Baer filed in Opposition to Plaintiffs' Motion for a Preliminary Injunction.

choice.

> Voter turnout data and election results were collected for three elections . . . We reviewed these data in order to develop a realistic estimate of minority population proportion necessary in each district or "effective minority voting equality" relative to the white voting population. Based on our review of the population statistics, registration data, election results, and a surname analysis, we believe our proposed Plan would withstand a challenge under the Voting Rights Act.[3]

The Referee's Report was incorporated in the June 8, 1992, decision of the State Supreme Court in Reid. The Court found:

> [U]pon listening to all of the comments and suggestions on various aspects of the plan, the court finds that the plan submitted by the referees to be complete and valid under the constitution of the United States and the State of New York as well as the Federal Voting Rights Act.[4]

3. Federal Court Decision and Process

Meanwhile, on April 7, 1992, the federal court in PRLDEF v. Gantt entered an order directing the parties to submit their recommendations for congressional redistricting plans by April 27, 1992. Based on the State's continuing failure to adopt a congressional redistricting plan, the federal court, on

---

[3] App. at A-93 to A-97.

[4] App. at a-46. Filed below as Ex. 10 to the Affidavit of C. Daniel Chill dated 7 November 1995.

May 12, 1992, appointed a Special Master to draw a plan.

The Special Master issued his Plan and Report of the Special Master on May 26, 1992. The Plan of the Special Master included seven majority minority districts, three of which were Latino. Each of the Latino districts had a voting age population of 55% or greater. One of the Latino districts was a tri-county (Kings, Queens and New York Counties) district.

The Special Master relied on, in part, the work of Professor Theodore S. Arrington of the University of North Carolina at Charlotte. In his affidavit[5] dated May 26, 1992, Professor Arrington stated:

> According to well-established social science finding's, the social and economic position of African-American citizens and language minorities in New York, particularly those in New York City and surrounding Counties disadvantages them politically. They have had inferior opportunities to participate in the political process as a whole and to elect candidates of their choice. It also appears that, compared to other citizens, they have lower rates of voter registration and voter turnout and are less likely to run for office or otherwise participate actively in the political process. When the effects of racially polarized voting are added to these factors, African-Americans, Hispanics, and Asians are confronted with an enormous barrier to equal participation and ability to elect candidates of their choice.[6]

Moreover, Professor Arrington had conducted an

---

[5] App. at A-158. Filed below as Ex. K to Affirmation of Arthur Baer.

[6] Arrington Affid. at para. 26. App. at A-177.

analysis of racially polarized voting in each of the seven proposed minority districts. Professor Arrington in his affidavit concluded, (1) that these seven districts provided, "African-Americans and Hispanics with an equal opportunity to elect candidates of their choice,"[7] (2) that each district was viable,[8] and (3) that there was racially polarized voting.[9]

On June 11, 1992, the PRLDEF Court accepted and approved the redistricting plan of the Special Master.[10] The PRLDEF court further ordered that unless a state adopted plan was precleared by July 8, 1992, the Special Master's plan would be used in the 1992 Congressional elections. In its written decision explaining its June 11, 1992 order, the court specifically held that the Special Master's plan complied with the Voting Rights Act. It found that "those groups purporting to represent African-American and Latino voters. . . established their initial burden under Gingles." 796 F.Supp. at 693. That is, they demonstrated the three Gingles preconditions for creating a single member district to remedy a section 2 violation as set forth in Thornberg v. Gingles, 478 U.S. 30 (1986).

4. The Legislature's Actions

Therefore, when the New York State Legislature enacted the State's current congressional plan into law, there was a state court decision which required New York's Twelfth Congressional District. There also was a federal court Special Master's plan which crafted a Latino majority tri-county Congressional district, similar to the Twelfth Congressional District. The Legislature was aware of these occurrences as

---

[7] Arrington Affid. at para. 70. App. at A-211.

[8] Id. at paras. 72 - 78. App. at A-212 to A-215.

[9] Id. at paras. 60 - 70. App. at A-202 to A-211.

[10] See PRLDEF v Gantt, 796 F. Supp. 681 (E.D. N.Y. 1992), vacated as moot, 506 U.S.__,121 L.Ed. 2d 3 (1992).

parties to both actions.

The State Legislature, faced with the uncertainty of whether the PRLDEF court plan or the Reid court plan would be used, adopted the State court plan. State Senator Ralph Marino, Majority Leader of the New York State Senate explained that the predominant motives of the Republican Majority in the Senate in adopting the plan were "political reasons, including incumbency protection." Silver App. at A-87. Benjamin Chevat, the chief counsel and chief of staff to the then Speaker of the New York State Assembly, which was controlled by the Democrats, further explained that "the primary and overwhelming motivation of the Assembly in passing the redistricting plan incorporated in the Reid judgment was to protect Congressional incumbency by acting to prevent the [Special Master's] plan from being ordered by the PRLDEF court." Silver App. at A-89.

In New York these statements of the Assembly Speaker and the Majority Leader of the Senate, as cited above, are clearly indicative of the Legislature's intent because of their dominant position and the unique nature of the New York state legislative process.[11] Nonetheless, numerous comments were made with respect to incumbency protection (and to the failure to create an additional Latino district) especially in the state Senate as noted in the district court opinion below.[12] As one Senator noted, the thrust for incumbency protection was obvious:

> I hope the courts will look at this, will look at the fact that they have this plan that is so terribly political and without having come through the proper political process, and I hope the courts or the Justice Department as they look

---

[11] See, Jurisdictional Statement of Appellant Sheldon Silver, herein, dated 17 April 1997, p. 19.

[12] Diaz v. Silver, Silver App. at A-29

> at it will not view this as the Legislature's plan, because it isn't.[13]

On or about June 11, 1992, the Governor of New York signed the redistricting plan into law. It was precleared by the United States Department of Justice (DOJ) by letter dated July 2, 1992.

5. The Opinion Below

The district court below did not conduct an evidentiary hearing or a trial in this matter. Instead it effectively found based on the Referees Report and the statements of their expert that the Legislature's predominant motive in adopting the plan and the Twelfth Congressional District was race, and that strict scrutiny applied.[14]

The court also found that the Twelfth Congressional District was not required under Section 2 of the Voting Rights Act and therefore, not narrowly tailored to meet the State's compelling interest in compliance with the Act. It held that the district was not compact.[15] The court, however, acknowledged that the Reid court found the district complied with State law compactness requirements. As the court stated:

> Despite the referees plan's disregard for compactness, the State Supreme Court found that the referees' proposed plan was "complete and valid under the constitutions of the United States and the State of New York as well as the Federal Voting Rights Act."[16]

---

[13] Remarks of Senator Franz Leichter. Silver App. at A-32.

[14] Diaz v. Silver, Silver App. A-50 to A-55.

[15] Id. at A-68 to A-72.

[16] Diaz v. Silver, Silver App. A-17 to A-18.

Among the criteria set forth in the referees' report was compactness under state law. Nevertheless, the district court found that "[t]he 12th CD simply is not compact, even by New York standards."[17] It gave no weight to the state trial court's decision. It also rejected the argument that the Twelfth Congressional District was narrowly tailored with respect to compactness, because it did not deviate substantially from New York's traditional compactness principles.[18]

In doing so, it effectively held that there is a federal-common law of compactness, which limits the authority of State Legislatures with respect to compactness:

> Moreover, we reject this argument [i.e. that the State's compactness standards be used to determine whether a district is narrowly tailored] because Gingles holds that section 2 embodies its own requirement of compactness regardless of the states's districting criteria. Even if a state's traditional districting standards exclude compactness (and we have found that New York's do not), section 2 of the VRA requires consideration of compactness.[19]

Finally, the district court did recognize that the New York State Legislature "could have created six majority-minority districts," and that the federal special master's plan, which created four majority-minority African-American Districts and three majority-minority Latino districts, "evidences - this."[20]

The district court never addressed the Lopez - intervenor's argument that the state had the strongest of

---

[17] Id. at A-71.

[18] Id. at A-71 to a-72.

[19] Id. at A-72.

[20] Id. at A-73.

evidence that the Twelfth Congressional District was required by the Voting Rights Act -- a state court decision requiring that it be adopted, and a federal court order adopting a similar district. Nor did the district court address Lopez intervenor's Rule 56(f), FED. R. CIV. P., affirmation, setting forth that they would seek discovery as to the motivations involved.

As noted above, the court made its ruling without a hearing or a trial and did not cite to the affidavits of the Senate Majority Leader and the Counsel to the Assembly Speaker. Nonetheless, it did acknowledge that protection of incumbents was a strong element in the debates in the New York State Senate.[21]

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

I. SUMMARY JUDGMENT IS INAPPROPRIATE IN A SHAW CHALLENGE WHERE THE DISTRICT COURT ASCRIBES RACIAL MOTIVES OF THIRD PARTIES TO THE LEGISLATURE IN THE FACE OF DIRECTLY CONFLICTING EVIDENCE OF OTHER MOTIVES FROM LEGISLATIVE LEADERS; ACCORDINGLY STRICT SCRUTINY CANNOT BE APPLIED.

Summary judgment is appropriate only where there is no genuine issue of material fact. The movant bears the burden of demonstrating that "there is an absence of evidence to support the nonmoving party's case."[22] Moreover, the district court is required to comb the record and to draw all justifiable

---

[21] Id. at A-29

[22] Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986).

inferences in favor of the non-movant.[23] This is particularly so in cases where discriminatory purpose is an element of the movant's case.[24]

Constitutional challenges under the Equal Protection Clause to congressional districts under Shaw v. Reno[25] clearly require proof of a discriminatory purpose on the part of the Legislature. In fact this Court demands more than just proof of a discriminatory purpose. It demands that there is proof that the "predominant factor motivating the Legislature's [redistricting] decision is race."[26] In this very term this Court recognized that this inquiry is complex and demanding: "[A]ssessing a jurisdictions's motivation in enacting voting changes is a complex task requiring a 'sensitive inquiry into such circumstantial and direct evidence as may be available.'"[27] This Court's other post-Shaw cases equally recognize the exacting and sensitive nature of this inquiry. Thus in Shaw II this Court noted that "[a]pplying traditional equal protection principles in the voting-rights context is 'a most delicate task.

---

[23] Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).

[24] See generally, Id. at 91 L.Ed. 2d at 216 ("Credibility determinations. . . are jury functions, not those of a judge whether he is ruling on a motion for summary judgment or for a directed verdict."); Schwarzer, William W., "Summary Judgment Under the Federal Rules: Defining Genuine Issues of Material Fact," 99 F.R.D. 465, 470 (1984) (Intent and motive are "historical facts" which are established by circumstantial evidence and inference and are jury issues).

[25] 509 U.S. 630, 125 L.Ed. 2d 511 (1993).

[26] Bush v. Vera, 517 U.S. ___, 135 L.Ed. 2d 248, 257 (1996).

[27] Reno v. Bossier Parish School Board, ___ U.S. ___, 65 U.S. Law Week 4308, 4313 (13 May 1997)(quoting Arlington Heights v. Metro Housing Dvlpmnt Corp., 429 U.S. 252, 266 (1977).

. .'".[28] And in Miller v. Johnson, it was recognized that "in assessing the sufficiency of a challenge to a districting plan, [courts] must be sensitive to the complex interplay of forces that enter a legislature's redistricting calculus."[29]

As noted below, this inquiry escaped the district court entirely. To our knowledge this is the first post-Shaw case to outlaw a State districting plan without giving the State the opportunity to rebut plaintiffs' case through an evidentiary hearing or trial.

1. Race was Not the Predominant Motivation Nor the But For Cause for the Legislature's Adoption of the Twelfth Congressional District.

The district court below held that race was the predominant factor in the adoption Twelfth Congressional District. In doing so, it effectively attributed an asserted intent of third parties, the State court referees and their consultants to the State Legislature. It also did so by finding general statements made in court or in the Legislative process about the creation of a second Latino congressional district, and the State's submission of the state court opinion and proceedings to the United State's Department of Justice was an "adoption" of the State court's intent.[30] It effectively held the State Legislature liable because of its awareness of race as a consideration in the creation of the plan.

The Legislature's awareness or consciousness that race was used in crafting a district alone is not sufficient to establish a prima facie Shaw claim. Rather, plaintiffs must prove that "the predominant factor motivating the Legislature's

---

[28] Shaw v. Hunt, 517 U.S. ___, 116 S.Ct. 1894, 1900 (1996).

[29] Miller v. Johnson, 515 U.S. ___ 115 S.Ct.2475, 2488 (1995).

[30] Diaz v. Silver, Silver App. at A-44 to A-55.

[redistricting] decision is race."[31].

It is axiomatic that "discriminatory purpose . . . implies more than intent as volition or intent as awareness of consequences. It implies that the decision maker . . . selected or reaffirmed a particular course of action because of, not merely in spite of, its adverse effects. " Personnel Administrator of Massachusetts v. Feeney.[32] In a Shaw claim plaintiffs have to demonstrate an even a higher standard of intent to evoke strict scrutiny. They must not only demonstrate that the Legislature adopted its districting plan "because of" race, but they must prove that the Legislature adopted its Congressional plan "predominantly because of "race. Here, plaintiffs have not demonstrated that the Legislature's motivation for adopting New York's districting plan was "because of "race, let alone that is was" predominantly because of race". Consequently, strict scrutiny does not apply.

The district court relied on New York's section 5 submission to the Justice Department to establish the Legislature's asserted unlawful intent. New York's § 5 submission makes no statement, in any manner, about the Legislature's motive in adopting New York's Congressional plan. With respect to the Report of the Referees, it merely states that the Report "explains in detail the background leading up to the development of this plan by the referees for the States Supreme Court." (Emphasis added).

This case is, thus, distinguishable from this Court's decisions in Shaw v. Hunt;[33] Bush v. Vera, supra; and Miller v. Johnson, supra. In Shaw v. Hunt, the State's submissions for preclearance expressly acknowledged that the state plan's "overriding purpose was to comply with the dictates of the

---

[31] Bush v. Vera, 517 U.S. ___, 135 L.Ed.2d 248, 257 (quotations and citation omitted, emphasis added).

[32] 442 U.S. 256, 279 (1979); see also, Miller. 132 L.Ed 2d at 779.

[33] 517 U.S. ___, 135 L.Ed.2d at 207 (1996)

[U.S.] Attorney General's. . . . . letter and to create two congressional districts with effective black voting majorities."[34] Similarly, in Bush, the State's §5 submission dealt with the Legislature's intent in adopting the districts.[35] And in Miller the district Court did not rely on the state's §5 submission but the sequence of events demonstrated through testimony, the Justice Department's objection letter, and the concession by the state that it's intent was to add black population to districts.[36]

Obviously, here, there is no such concession. The Legislature's and Governor's awareness that the state court plan created majority-minority districts; and even submissions or statements by their counsel in court proceedings, do not convert the Legislature's motive in adopting New York's congressional plan into a predominantly racial one.

Moreover, if the New York Legislature chose not to act here, a plan -- very likely the federal court plan, which created three majority Latino districts rather than the two reflected in the State plan - would have become law. Thus, there was also no drive by the Legislature to maximize the number of Latino majority seats. Nor was there any alleged pressure by the Department of Justice to maximize minority districts.

Inaction would not have left New York without a legal plan, as the federal court plan would likely have gone into effect. Therefore, notwithstanding the district court's holding to the contrary, the Reid court's decision cannot be said to have caused the Legislative's adoption of the Reid plan. That plan's adoption was rather motivated and caused predominately by incumbency protection as noted in the affidavits of Sen. Marino

---

[34] 135 L.Ed.2d at 219. (emphasis in original).

[35] 135 L.Ed.2d at 264 ("The goal was to not only create a district that would maximize the opportunity for the black community . . . but also one that included some of the major black growth areas . . .")

[36] 132 L. Ed 2d at 780-781.

and Mr. Chevat.[37]

The district court's efforts to essentially attribute asserted third party motivations to the State legislature is errant and inconsistent with this Court's decision in Arlington Heights v. Metropolitan Housing Development Corporation.[38] In Arlington Heights, this Court, while noting that a Village's zoning decision arguably weighed more on racial minorities, did not attribute the motivation of third parties to the local legislature. Rather, this Court held that "[r]espondents simply failed to carry their burden of proving that discriminatory purpose was a motivating factor in the Village's decision." Id. at 270. It reasoned that the race-neutral reasons given by the defendants had been "applied . . . too consistently for us to infer discriminatory purpose." Id.

In the present case the district court found without a hearing that the statements made by the Referees and their experts were admissions of the Legislature.[39] How the district court was able to square this with the direct and conflicting evidence from the Senate and Assembly leaders is not explained below.

Likewise plaintiffs herein did not meet their burden of demonstrating that discriminatory purpose was the predominant motivating factor. Rather, the undisputed evidence submitted here by the principal legislative actors -- such as Sen. Marino, Mr. Chevat -- demonstrates that the policy of incumbency protection was applied by the Legislature in its adoption of New York's congressional plan at the expense of Latino voters, not in their favor.

2. Summary Judgment was Especially Prejudicial to the Lopez Intervenors Who Sought to Preserve their Rights to

---

[37] Silver App. at A-86 and A-88, respectively.

[38] 429 U.S. 252 (1977).

[39] Diaz v. Silver, Silver App. at A-52.

Discovery.

Summary judgment should have been denied plaintiffs as evidence before the district court raised contested issues of material fact.

For the Lopez intervenors, however, summary judgment was especially inappropriate. There is a substantial question as to whether the district court abused its discretion by granting summary judgment, when the Lopez intervenors had submitted a sworn affirmation pursuant to Rule 56(f), FED. R. CIV. P., in which they indicated why they had not been able to undertake discovery and that they would seek to take discovery on the issue of motive.[40] The court never addressed this affirmation.

In summary judgment motions under Rule 56, FED. R. CIV. P., it is essential for the non-moving party to have an adequate time for discovery.[41] Consequently, the intervenors ability to contest the inferences subsequently made by the district court on the critical issue of discriminatory purpose, as well as on the secondary issue of whether Latinos constituted a "community of interest" for redistricting purposes was curtailed without comment.

II. STRICT SCRUTINY IS INAPPROPRIATE IN A SHAW CHALLENGE TO A DISTRICT WHICH, WHILE ADMITTEDLY IRREGULAR IN SHAPE, IS CONSISTENT WITH LOCAL COMPACTNESS PRACTICES AND THEREFORE EXPLICABLE ON GROUNDS OTHER THAN RACE

> Strict scrutiny applies where "redistricting legislation. . . is so extremely irregular on its face that it rationally can be viewed only as an effort to segregate the races for purposes of

---

[40] App. at A-18 to A-19.

[41] Celotex Corp. v. Catrett, 475 U.S. 317, 91 L.Ed.2d 265, 272 (1986).

> voting without regard for traditional districting principles," *Shaw I* U.S., at 642, or where "race for its own sake, and not other districting principles, was the legislature's dominant and controlling rationale in drawing its district lines," *Miller*, 515 U.S., at____ (slip op., at 11), and "the legislature subordinated traditional race-neutral districting principles. . . to racial considerations,"*id.*, at____(slip op., at 15). See also id,. at ___(slip op,. at 1) (O'Connor, J., concurring) (strict scrutiny only applies where "the State has relied on race in substantial disregard of customary and traditional districting practices")[42]

As this excerpt from Bush v. Vera demonstrates strict scrutiny in Shaw redistricting challenges applies in limited circumstances. Intervenors have addressed above in Point I how it is impossible for a district court to make the critical inquiry on discriminatory purpose without the benefit of an evidentiary hearing under the circumstances of this case. Below, intervenors discuss how local traditions and practices regarding compactness standards must be accounted for in any analysis that seeks to posit a reasonable compactness standard.

1. Traditional Redistricting Criteria Must Turn on State-based Reference Points

This Court in Bush v. Vera clarified that the traditional redistricting criteria it was referring to (in the passage excerpted above) are the traditional redistricting criteria used by the State

---

[42] Bush v. Vera, supra, 135 L.Ed. 2d at 256-57 (internal citations and quotes partially omitted).

whose district is being challenged.[43] As long as a district does not substantially deviate from a court drawn §2 district, i.e. as long as a district is substantially in accord with the State's own requirements, a plaintiff has not demonstrated a prima facie case. Thus, in Miller as in Bush, this Court requires that plaintiffs demonstrate that the State's traditional redistricting criteria were subordinated for predominately racial motivation.

Indeed, this Court in Bush made clear that a State may intentionally create a majority-minority district that is in accord with the State's traditional redistricting principles and not be subject to strict scrutiny:

> Strict scrutiny does not apply merely because redistricting is performed with consciousness of race. See Shaw I, supra, [509 U.S.] at 646. Nor does it apply to all cases of intentional creation of majority-minority districts. See, Dewitt v. Wilson, 856 F.Supp 1409 (E.D. Cal. 1994) (strict scrutiny did not apply to an intentionally created compact majority-minority district), summarily aff'd, 515 U.S. ___ (1995);
>
> . . . .
>
> The Constitution does not mandate regularity of district shape, see Shaw I, 509 U.S. at 647 and the neglect of traditional districting criteria is merely necessary [to require strict scrutiny], not sufficient. For strict scrutiny to apply, traditional criteria must be subordinated to race, Miller, 515 U.S., at ___(slip. op. at 15). Nor, as we have emphasized, is the decision to create

---

[43] Bush v. Vera, 135 L.Ed.2d at 269 ("[States] may avoid strict scrutiny altogether by respecting their own traditional districting principles").

> a majority-minority district objectionable in and of itself.[44]

The substantial question raised by this appeal is who defines "traditional districting criteria?" The States or the federal courts?

A. Section 2 of the Voting Rights Act Does Not Create a Federal Common Law of Compactness.

Does federal law impose a compactness standard on the States? More specifically, does Section 2 of the Voting Rights Act restrict and limit a State, such as New York, that does not historically or customarily adhere to aesthetic compactness (especially for New York City), from engaging in redistricting in accord with its own historic compactness practices. The district court found that Section 2 establishes a federal common law of compactness, which restricts State Legislatures in redistricting congressional seats.[45] Its decision is inconsistent with decisions of this Court.

This Court has repeatedly held that compactness and other traditional redistricting criteria are not constitutionally required.[46] This reflects the Court's on going respect for the State's sovereign interest in redistricting. Thus, this Court in Miller v. Johnson stated:

---

[44] Bush v. Vera, 135 L.Ed.2d at 257 and 259 (emphasis added). Justice Kennedy was the only member of the plurality that expressed reservations with the view. See, Bush v. Vera, 64 U.S.L.W. 4452, 4465 (11 June 1996).

[45] Diaz v. Silver, Silver App. at A-72.

[46] See, eg., Gaffney v. Cummings, 412 U.S. 735, 752 n.18 (1973); Shaw v. Reno, 509 U.S. ___, 125 L.Ed.2d 511 (1993); Bush v. Vera, 517 U.S. ____, 135 L.Ed.2d 248, 259 (1996).

> It is well settled that reapportionment is primarily the duty and responsibility of the state. Electoral districting is a most difficult subject for the legislature, and so the state must have discretion to exercise the political judgment necessary to balance competing interests.[47]

More recently, this Court similarly emphasized in Bush:

> [W]e adhere to our longstanding recognition of the importance in our federal system of each State's sovereign interest in implementing its redistricting plan. Under our cases, the states retain flexibility that federal courts enforcing Section 2 lack, both insofar as they may avoid strict scrutiny altogether by respecting their own traditional districting principles, and insofar as deference is due to their reasonable fears of, and to their reasonable efforts to avoid § 2 liability. And nothing we say today should be read as, limiting a State's discretion to apply traditional districting principles in majority-minority, as in other, districts.[48]

This Court explained in Bush that "[a] section 2 district that is reasonably compact and regular taking into account traditional districting principles such as community of interest and traditional boundaries, may pass strict scrutiny without having endless 'beauty contests.'" Bush, id. (emphasis in original). Consequently, if a State creates a district that comports with its own law and customary redistricting practices

---

[47] Miller, supra, 132 L.Ed. 2d at 779 (citations and internal quotations omitted).

[48] Bush v. Vera, 135 L.Ed.2d at 269 (citations and internal quotations omitted; emphasis added).

with respect to compactness, it should be held to be "reasonably compact."

The use of the State's own traditional districting criteria serves several critical purposes set forth by this Court in Bush, not only by members of the plurality, but also by the dissent. First, deferring to traditional State practices in districting helps maintain the appropriate deference to federalism concerns. As this Court has emphasized repeatedly, the Constitution places the responsibility of redistricting on the States in the first instance.[49] Second, it avoids the expressive harms with which the Bush plurality is concerned.[50] That is, where a state, like New York, traditionally does not use aesthetic compactness criteria, expressive harms would be incurred by imposing such criteria through a "federal common law" of compactness. This harm would result because only a majority-minority district would be required to be aesthetically compact as per the federal standard. Third, it prevents federal "common law" from displacing State-law-based redistricting criteria and thereby, avoids the improper substitution of the judgment of federal courts for State Legislatures. Fourth, it provides a discernable standard with which State Legislatures are familiar and can operate without fear of endless litigation. Fifth, it provides federal courts with a discernable benchmark by which to judge whether there has been substantial deviation from the State's traditional criteria. Finally, it allows legislatures and those seeking to redress denials of equal electoral opportunity to use the same tools to redress past discrimination as others use for, for example, political concerns.

Accordingly, the district court's holding that a federal common law of compactness under Section 2 exists, and undercuts local practices should be rejected.

---

[49] See, Miller v. Johnson, 132 L.Ed 2d 762, 779 (1995); Voinovich v. Quilter, 507 U.S. 147, 156 (1993); see also, Bush, 135 L.Ed.2d at 269; Id. at 317, (Souter, J., dissenting).

[50] Bush v. Vera, 135 L.Ed. 2d at 271.

B. The District Court Erred In Finding The Twelfth Congressional District Is Not In Accord with New York Law and its Traditional and Customary Compactness Practices.

The district court not only erred in holding that there was a federal compactness standard, but also erroneously rejected the State's standard that was upheld contemporaneously in Reid v. Marino.

There is no dispute that compactness is a criteria in New York, and contrary to the district court's assertions, the Lopez intervenors did not argue that compactness was not a criteria.[51] Rather, they argued that the Twelfth Congressional District was in accord with New York's traditional compactness criteria -- that an analysis of New York's traditional redistricting practice demonstrates that aesthetically compact districts have not been the norm in New York City; that instead, the State has in redistricting New York City, placed a wide variety of disparate communities together in non-aesthetic and indeed, in several instances, even in non-contiguous districts and that these expansive districts swept across large sections of the city.[52]

The district court acknowledged that the trial court in Reid v. Marino found that the redistricting plan here fully complied with the New York constitution and other applicable criteria set forth in the Referees Report (which included compactness), but gave it no weight on a matter of state law.

As the Referees Report in Reid, which was incorporated into the State Court decision, made clear:

> There are no federal or state requirements that congressional districts be contiguous.
>
> . . .
>
> The New York State Constitution and statutes

---

[51] Diaz v. Silver, Silver App. at A-62 to A-63.

[52] The history of New York's practices in this regard (cited but not followed by the court below) appears in the appendix. App. A-21 to A-40.

> [on compactness] are silent on the subject of Congressional reapportionment. However, there are provisions in the State Constitution regarding redistricting of the State Legislature. . . In addition, the State election law provides for districts in compact form. Of course, these requirements are not binding on this Court in its redistricting of federal congressional districts, but do represent the State Legislature's concerns regarding the creation of legislative districts.[53]

The district court misconstrued the New York Court of Appeals in Schneider v Rockefeller[54] to infer that the compactness requirements for State Assembly and Senate districts applied to congressional districts.[55] The New York Court of Appeals was not addressing "compactness," but rather equality of population standards as the full quote makes clear:

> [T]he authorities amply support the choice of maximum population equality as a guiding principle in redistricting and reapportioning the State Legislature. Indeed, we are of the opinion that the standards for State legislative and congressional apportionment are substantially the same.[56]

Thus, the Court of Appeals' statement on the similarity of standards for State legislative and congressional apportionment had nothing to do with applying compactness requirements of the State constitution to congressional districts.

---

[53] Referees Report (emphasis added); App. at A-97 to A-100.

[54] 31 N.Y. 2d 420, 340 N.Y.S. 2d 889 (1972).

[55] Diaz v. Silver, Silver App. at A-65.

[56] 31 N.Y. 2d at 428.

In Schneider the Court of Appeals went further to recognize the amorphous quality of New York's compactness criteria, even as applied to such State Legislative seats:

> The term "compact", on the other hand, has no precise meaning within the context of the constitutional mandate. Moreover, the Constitution does not provide unqualifiedly for compactness. At a minimum the Legislature may, in good faith, take account of existing political subdivision lines, topography, means of transportation and lines of communication without violating this standard. Particularly where cities are concerned, the requirement of practical numerical equality may necessitate boundaries that are ragged at best. Moreover, it is manifest that our State, with its irregular boundaries, its islands rivers, lakes and other geographical features is not susceptible of division into circular planes or squares. Thus, it might be said that the constitutional requirement of compactness is peripheral in its thrust, forbidding a complete departure, yet leaving to the determination and discretion of the Legislature the degree of compactness which is possible in the total representation picture.[57]

The undisputed facts in the record reflect New York's congressional districts have historically not been aesthetically compact. New York's compactness practices in districting have continued from the earliest days of the nation into the 1980's and 1990's.[58] The State has in redistricting New York City

---

[57] 31 N.Y. 2d at 429-430 (citations omitted); compare Diaz at Silver App. A-65.

[58] Intervenor's description of the historical examples of irregular, non-compact districts is contained in App. A-21 to A-40.

placed a wide variety of disparate communities together in non-aesthetic and indeed, in several instances, even non-contiguous districts. These expansive districts sweep across large sections of the City. Districts have often included neighborhoods located within different boroughs with district lines crossing geographical boundaries such as rivers and bridges.

Even members of this Court have recognized the lack of aesthetics in New York's congressional districts. Thus, Justice Douglas referred to New York's districts created after the 1960 decennial census as "zigzag, tortious lines" which followed a "serpentine path."[59]

In terms of historical compactness, New York State's mean levels of dispersion and perimeter scores in the 1980's and 1990's remained identical. In the 1980s, New York had seven districts with a perimeter score of below .08 and in the 1990s, eight districts had a score below .08.[60] In contrast, Texas, the subject of Bush v. Vera, had no districts with a dispersion score of below .20 during the 1980s, but in the 1990s, had five districts with a dispersion score below .20.[61] Further, Texas in the 1980s had no districts with a perimeter score below .08 and during the 1990s, the number jumped to nine. The case at bar is, thus, distinct from Bush where the district court found that aesthetic compactness and other criteria had previously been the general rule in Texas.[62]

---

[59] Wright v. Rockefeller, 376 U.S. 52, 59 (Douglas, J. dissenting).

[60] Niemi, Richard G. and Pildes, Richard H., "Expressive Harms, Bizarre District and Voting Rights: Evaluating Election - District Appearances After Shaw v. Reno." 92 Mich. L. Rev. 483 (1993) at 571-573. Scores range from 0.0 to 1.0 with 1.0 being the perfect score. Id. at 572.

[61] Id. at 573.

[62] Bush, 135 L. Ed.2d at 257-58.

C. State Law is Determinative on the Question of Preserving Communities of Interest

The District Court cites Bush v. Vera (and other cases) for the proposition that "common employment, services, religion, economy, country of origin and culture are **more relevant** than polarized voting in determining whether a community of interest exists."[63] However, these cases merely list the above factors as potential common concerns of communities among various other elements which can distinguish communities of interest such as: residing in an urban versus rural area, residing in communities with a technical rather than industrial focus, or in communities with access to the same media of communication relevant to the election process.[64]

Yet the real issue is whether the Legislature considered maintenance of such a community as a goal in creating the plan in addition to its strong interest in incumbency protection. In examining whether creating communities of interest was one goal of the districting plan in Bush v. Vera, the court conceded that in districting with an eye toward creating communities of interest as well as other race neutral goals, the relevant facts may not be explicitly mentioned in the legislative history: "If, as may commonly happen, traditional districting principles are substantially followed without much conscious thought, they cannot be said to have been subordinated to race."[65] The Final Report of the referees indicates that traditional districting criteria such as communities of interest were considered in drawing the plan. Such an inquiry would also consider how the subject community aligns itself politically as an additional factor. As indicated in Bush, extensive factual evidence of this

---

[63] Diaz v. Silver, Silver App. at A-59 (emphasis added).

[64] Carstens v. Lamm, 543 F. Supp 68 (D. Colo. 1982) and Wilson v. Eu, 1 Cal. 4th 707, 823 P.2d 545 (Cal. 1992).

[65] Id. ___ U.S. ___, 64 U.S.L.W. at 4457.

is not necessary to attribute such goals to the referees in their planning process.

More importantly, as Point III below demonstrates, this question of state law was already resolved by the state court in Reid v. Marino and should have been honored by the district court below.

III. IF STRICT SCRUTINY WERE TO APPLY, THE STATE HAD STRONG EVIDENCE THAT THE CREATION OF THE TWELFTH CONGRESSIONAL DISTRICT WAS NARROWLY TAILORED TO COMPLY WITH SECTION 2 OF THE VOTING RIGHTS ACT.

This case also raises the substantial question of whether State Legislatures may rely on State and Federal court decisions as a basis to create a majority-minority district. In holding that the Twelfth Congressional District was not narrowly tailored to meet New York's compelling interest in complying with the Voting Rights Act, the district court effectively held that the State Legislature could not rely on the Reid v. Marino state court decision or the findings of a federal Special Master in PRLDEF v. Gantt. Its decision is inconsistent with Shaw v. Reno, 509 U.S. ___, 125 L.Ed.2d 511("we have previously recognized that the significant state interest in eradicating the effects of past discrimination. . . . But the state must have a strong basis in evidence for concluding that remedial action is necessary.") (citations omitted), and this Court's decision in Bush. As stated by the plurality in Bush: "If the State has a strong basis in evidence, for concluding that the creation of a-majority-minority district is reasonably necessary to comply with §2, and the districting that is based on race substantially addresses the §2 violation, it satisfies strict scrutiny."[66]

Here, there was clearly strong evidence that the Twelfth

---

[66] Bush, 135 L.Ed. 2d at 268, (citations and internal quotations omitted).

Congressional District was required under the Voting Rights Act: 1) a state court order in Reid requiring the creation of the very same district; and 2) the findings and plan of a federal court Special Master that created a tri-county Latino Congressional district similar to the Twelfth District. The evidence that remedial action is required was supported amply by the extensive analysis by the Referees in the Reid case. Election results were analyzed to augment the court's conclusion that the Twelfth District would withstand a challenge under the Voting Rights Act. Similarly, the federal court's Master Plan was prefaced by the findings of Professor Arrington regarding polarized voting and the other Senate factors in Section 2, Voting Rights Act cases.

Moreover, not only does the Twelfth Congressional District not deviate from "hypothetically Court-drawn §2 district," it was indeed adopted from such a district, drawn by the New York State Supreme Court in Reid v. Marino. Consequently, it must be sustained. Cf., Growe v. Emison, 507 U.S. _____, 122 L.Ed 2d 388, 400 (1993) ("both state [Judicial and Legislative] branches [are preferred] to federal courts as agents of apportionment").

This evidence must be held to be strong evidence that the creation of the Twelfth District was narrowly tailored to meet a violation of the Voting Rights Act. If legislatures cannot rely on judicial decisions, to which they are a party, no evidence ever would suffice and judicial decisions would have to be considered nullities by the legislature. The district court's decision is clearly at odds with the holdings of this Court. Accordingly, if strict scrutiny was appropriately applied in this case, and intervenors do not concede this, then the Legislature has strong, contemporaneous evidence that the Twelfth District substantially addressed the violation of the Voting Rights Act.

CONCLUSION

For the reasons stated above, Appellants respectfully request that this Court should note probable jurisdiction, or summarily reverse and grant judgment to defendants based on plaintiffs failure to establish a prima facie case via a summary judgment motion and their failure to establish that the district at issue was not narrowly tailored to meet the State's compelling interest.

Dated: 29 May 1997

Respectfully submitted,

Juan Figueroa
Puerto Rican Legal Defense
& Education Fund, Inc.
99 Hudson Street
New York, NY 10013
(212) 219-3360

Juan Cartagena
(Counsel of Record)
Jennifer Modell
Community Service Society
of New York
105 East 22nd Street
New York, NY 10010
(212) 254-8900

Attorneys for Appellants
Luis Garden Acosta and Margarita Lopez

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

SHELDON SILVER, et al.,
Appellants,

vs.

ANGEL DIAZ, et al.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPENDIX TO JURISDICTIONAL STATEMENT

JUAN CARTAGENA
Counsel of Record
JENNIFER MODELL
COMMUNITY SERVICE SOCIETY OF NEW YORK
105 East 22nd Street
New York, NY 10010
(212) 254-8900

JUAN FIGUEROA
PUERTO RICAN LEGAL DEFENSE & EDUCATION FUND
99 Hudson Street
New York, NY 10013
(212) 219-3360
Attorneys for Appellants Luis Garden Acosta & Margarita Lopez

Appendix A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ANGEL DIAZ, et al.,	:	Index No. 95-CV-2591 (DGT, JMM, SJ)
Plaintiffs,	:	
-against-	:	NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES
SHELDON SILVER, et al.,	:	
Defendants.	:	

Notice is hereby given that Defendant-Intervenors Magarita Lopez and Luis Garden Acosta (Lopez Intervenors) hereby appeal to the Supreme Court of the United States from the final judgment of the three-judge district court, entered in this action on February 28, 1997 granting, upon plaintiff's summary judgment motion, declaratory and injunctive relief, and denying Lopez Intervenors cross-motion for summary judgment.

This appeal is taken pursuant to 28 U.S.C. § 1253.

By: /S/ Arthur A. Baer

Arthur A. Baer (AB8927)
Puerto Rican Legal Defense & Education Fund, Inc.
99 Hudson Street, #14th Floor
New York, New York 10013

TO: Robert D. Popper
223 East 61st Street
Attorney for Plaintiffs
New York, New York 10016

Delco L. Cornett, Esq.
Murray Hill Station
P.O. Box 692
New York, New York 10156
Plaintiff-Intervenor Pro Se

C. Daniel Chill, Esq.
Graubard, Mollen & Miller
600 Third Avenue
New York,New York 10016-2097
Attorneys for Defendant
Sheldon Silver

Joel Graber, Esq.
Attorney General's Office
of the State of New York
120 Broadway
New York, New York 10271
Attorneys for Defendants
George E. Pataki,
Joseph L. Bruno, and the
Board of Elections
of the State of New York

Paul Wooten
Attorney at Law
576 Pacific Street
Brooklyn, New York 11217
Attorney for the Defendants-
Intervenors,
Rep. Nydia Velazquz and William
Abrams

Elizabeth OuYang, Esq.
Asian American Legal Defense &
Education Fund, Inc.
99 Hudson Street
New York, New York 10013
Co-counsel for Defendants-Intervenors
Peter Lau and John Kuo Wei Tchen

Mark D. Becket, Esq.
Latham & Watkins
885 Third Avenue, Suite 1000
New York, New York 10022-4801
Co-counsel for Defendants-Intervenors
Peter Lau and John Kuo Wei Tchen

Rep. Carolyn B. Maloney
Member of Congress
14th Congressional District
110 East 59th Street, 2nd Floor
New York, New York 10022
Defendants-Intervenors, Pro Se

Appendix B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ANGEL DIAZ, et al., Plaintiffs,	:Certificate of Service
-against-	:95-CV-2591 (DGT, JMM, SJ)
SHELDON SILVER, et al., Defendants.	:

I affirm that the Defendant-Intervenors Margarita Lopez and Luis Garden Acosta's Notice of Appeal To the Supreme Court of the United States was served on the parties on the attached service list as indicated on March 31, 1997.

/S/ Arthur A. Baer
Arthur A. Baer

TO:

Delco L. Cornett, Esq.
(By First Class Mail)
Murray Hill Station
P.O. Box 692
New York, NY 10156

C. Daniel Chill, Esq.
(By First Class Mail)
Graubard, Mollen & Miller
600 Third Avenue
New York, NY 10016-2097

Joel Graber, Esq.
(By First Class Mail)
New York State
Attorney General's Office
120 Broadway
New York, NY 10271

Paul Wooten
(By First Class Mail)
Attorney at Law
576 Pacific Street
Brooklyn, New York 11217

Elizabeth OuYang, Esq.
(By First Class Mail)
Asian American Legal Defense &
Education Fund, Inc.
99 Hudson Street, 12th Floor
New York, NY 10013

Hon. Carolyn B. Maloney
(By First Class Mail)
110 East 59th Street,
2nd Floor
New York, NY 10022

Robert D. Popper
(By First Class Mail)
223 East 61st Street
New York, NY 10016
Attorney for Plaintiffs

Mark D. Becket, Esq.
(By First Class Mail)
Latham & Watkins
885 Third Avenue, Suite 1000
New York, NY 10022-4801

Appendix C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ANGEL DIAZ, et al.,	:	Index No. 95-CV-2591
	:	(DGT, JMM, SJ)
Plaintiffs,	:	
	:	NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES
-against-	:	
SHELDON SILVER, et al.,	:	
Defendants.	:	

PLEASE TAKE NOTICE that Defendant-Intervenors Peter Lau and John Kuo Wei Tchen hereby appeal to the Supreme Court of the United States from the final judgment of the three-judge district court entered on February 28, 1997 granting, upon plaintiffs' summary judgment motion, declaratory and injunctive relief.

This appeal is taken pursuant to 28 U.S.C. Section 1253.

Dated: April 23, 1997

By: /S/ Elizabeth R. OuYang (E09205)
Elizabeth R. OuYang (EO9205)
Margaret Fung (MF0856)
ASIAN AMERICAN LEGAL DEFENSE
AND EDUCATION FUND
99 Hudson Street, 12th Floor
New York, New York 10013-2869
Tel. (212) 966-5932

TO: Robert D. Popper
223 East 61st Street
New York, NY 10016
Attorney for Plaintiffs

Delco L. Cornett, Esq.
Murray Hill Station
P.O. Box 692
New York, NY 10156
Plaintiff-Intervenor Pro Se

C. Daniel Chill, Esq.
Graubard, Mollen & Miller
600 Third Avenue
New York,New York 10016-2097
Attorneys for Defendant, Sheldon Silver,
Speaker of the New York State Assembly

Joel Graber, Esq.
Assistant Attorney General
NYS Department of Law
120 Broadway
New York, New York 10271
Attorneys for Defendants
George E. Pataki, Joseph L. Bruno

and the Board of Elections of the
State of New York

Arthur A. Baer, Esq.
Puerto Rican Legal Defense and
Education Fund, Inc.
99 Hudson Street, 14th Floor
New York, New York 10013
Attorneys for Defendants-Intervenors
Margarita Lopez and Luis Garden
Acosta

Paul Wooten, Esq.
576 Pacific Street
Brooklyn, New York 11217
Attorney for the Defendants-
Intervenors
Representatives Nydia Velazquz and
Major Owens, et al.

Representative Carolyn B. Maloney
U.S. Representative
14th Congressional District
110 East 59th Street, 2nd Floor
New York, New York 10022
Defendant-Intervenor Pro Se

Appendix D

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

ANGEL DIAZ, DENISE L. MOTLEY, and REYNALDO COHOLO; Plaintiffs	NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES
DELCO L. CORNETT, Plaintiff-Intervenor,	
-against-	INDEX NO. 95 CIV. 2591 (DGT, JMM, SJ)
SHELDON SILVER, in his officialcapacity as Speaker of the House for the Assembly JOSEPH L. BRUNO, in his official capacity as President Pro Tem and Majority Leader of the Senate of the State of New York; George E. Pataki, in his official capacity as Governor of the State of New York; and OWEN T. SMITH, EVELYN J. AQUILA, and HELENA M. DONOHUE, in their official capacities as commissioners of the Board of Elections; THE BOARD OF ELECTIONS OF THE STATE OF NEW YORK; and JOHN DOES 1 THROUGH 50, the names of such defendants	

being fictitious and unknown :
to plaintiffs, and referring
to those persons who are :
responsible in their official
capacities for the
enforcement of the :
legislation that created
New York's federal :
congressional districts;
:
and
:
LUIS GARDEN ACOSTA
and MARGARITA LOPEZ, :

and :

Rep. NYDIA VELÁZQUEZ, :
Rep. MAJOR R. OWENS,
MARSHALL DUBIN, :
CARLOS LOPEZ, ASQUITH REID,
EVY PAPILLONO-JUSTE, :
WILLIAM ABRAMS, and
ANNELLA C. JOHNSON :

and :

Rep. CAROLYN B. MALONEY, :

Defendants-Intervenors. :
----------X

PLEASE TAKE NOTICE that the Defendants-Intervenors, Rep. Nydia Velázquez, Congressional Representative from the 12th Congressional District, New York City, New York State, and William

Abrams, hereby appeals to the Supreme Court of the United States from the final Judgment of the Three-Judge District Court, entered in this action on February 28, 199_, upon plaintiff's summary judgment motion for declaratory and injunctive relief.

Dated: Brooklyn, New York
March 24, 1997

By: /S/ Paul Wooten

Paul Wooten
Attorney at Law
576 Pacific Street
Brooklyn, New York 11217
(718) 399-7940
Attorney for the Defendants-
Intervenors, Rep.
Nydia Velázquez and William Abrams

TO: Robert D. Popper
223 East 61st Street
Attorney for Plaintiffs
New York, New York 10016

Delco L. Cornett, Esq.
Murray Hill Station
P.O. Box 692
New York, New York 10156
Plaintiff-Intervenor Pro Se

C. Daniel Chill, Esq.
Graubard, Mollen and Miller

600 Third Avenue
New York, New York 10016-2097
Attorneys for Defendant
Sheldon Silver

Joel Graber, Esq.
Attorney General's Office
of the State of New York
120 Broadway
New York, New York 10271
Attorneys for Defendants

George E. Pataki, Joseph
L. Bruno, and the Board
of Elections of the State
of New York

Juan A. Figueroa
Arthur A. Baer (AB8927)
Kenneth Kimerling (kk5762)
Puerto Rican Legal Defense and
Education Fund, Inc.
99 Hudson Street
New York, New York 10013
Attorneys for Defendants-Intervenors
Lopez and Acosta

Elizabeth R. OuYang, Esq.
Asian American Legal Defense and
Education Fund, Inc.
99 Hudson Street
New York, New York 10013
Co-counsel for Defendants-Intervenors
Peter Lau and John Kuo Wei Tchen

Mark D. Becket, Esq.
Latham & Watkins
885 Third Avenue, Suite 1000
New York, New York 1022-4801
Co-counsel for Defendants-Intervenors
Peter Lau and John Kuo Wei Tchen

Rep. Carolyn B. Maloney
Member of Congress
14th Congressional District
110 East 59th Street, 2nd Floor
New York, New York 10022
Defendants-Intervenors, Pro Se

Appendix E

42 U.S.C. 1973(b)(f)(2), provides:

(2) No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group.

42 U.S.C. 19731(c)(3) provides:

The term "language minorities" or "language minority group" means persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage.

Appendix F

II. Analysis of Change to Previous Law (51.27)(c))

The Redistricting Plan for Congressional Districts for the State of New York enacted by the Legislature in Chapter 138 was designed by referees appointed by New York State Supreme Court Justice James A. Shaw as a result of litigation in Reid et. al v. Marino et. al No. 95671/92, ordered and judgment (Kings County Sup. Ct. June , 1992). The Report of the Referees to Justice Shaw explains in detail the background leading up to the development of this plan by the referees for the State Supreme Court. On June 8, 1992 Justice Shaw issued an order implementing this plan as a state law and ordered the State Board of Elections to effectuate its implementation.

On Monday, June 8th, the New York State Senate enacted the State Court plan as a bill in S. 8610. On Tuesday, June 9th the State State Assembly followed by enacting the same plan in A.11921. Governor Mario Cuomo signed this legislation on Friday, June 12, 1992. This law, incorporating the state court plan, is being submitted for preclearance. The Report of the Referees follows.

Appendix G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

ANGEL DIAZ, et al; :

Plaintiffs, : 95 Civ. 2591 (DGT, JMM, SJ)

-against- : Second Affirmation of Arthur Baer

SHELDON SILVER, et al;

Defendants. :

----------X

I, Arthur A. Baer, affirm under the penalties of perjury the following:

1. I am an attorney for Defendant Intervenors Margarita Lopez and Luis Garden Acosta ("Lopez Intervenors") and make this affirmation in support of Lopez Intervenors cross motion for summary judgment and in opposition to plaintiffs' motion for summary judgment.

2. Attached hereto as Exhibit 1 is a copy of the Congressional Research Service Report for Congress, by David C.

Huckabee, dated May 24, 1994 (note: a few pages are missing).

3. Attached hereto as Exhibit 2 is a copy of pages 37-39, the 1990 Census of Population and Housing characteristics for Congressional Districts of the 103rd Congress/New York, U.S. Department of Commerce and Statistics Administration Bureau of Census, January 1993, 1990 CPH-4-34. ("1990 New York Census Data")

4. Attached hereto as Exhibit 3 is a copy of pages G-4, G-16, G-31, G-37, G-43, G-65, and G.73 from the 1990 New York Census Data, above.

5. Pursuant to rule 56(f), Lopez intervenors stated that they have not undertaken any discovery in this action. Intervention was granted on May 14, 1996. Intervenors' counsel has thus had little time for discovery and no party has yet taken discovery in this action. If the

intent of the referees and/or their experts is determined to material facts in this action, Lopez intervenor's would seek to depose some or all of them in order to determined the balance of their priorities and the considerations given by the referees and their expert(s) with respect to protecting incumbents and other criteria such as compactness, communities of interest, voting rights act compliance, etc. They would inquire, inter alia, with whom such referee(s), or expert(s) met, the nature of their discussions, and why and to what extent incumbent protection efforts were made; how the plan was crafted, who were given what responsibilities in the crafting plan, the actors decision making process, when and to whom the plan was shown.

Dated: August 5, 1996

/S/ Arthur Baer
Arthur A. Baer

Appendix H

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

ANGEL DIAZ, et al;

Plaintiffs,

-against-

95 Civ. 2591 (DGT, JMM, SJ)

SHELDON SILVER, et al;

Defendants.

----------X

APPENDIX A & B
TO
Defendant intervenors Margarita Lopez and Luis Garden Acosta's memorandum of law in opposition to plaintiffs motion for summary judgment and in support of their cross motion for summary judgment

Arthur A. Baer (AAB8927)
Kenneth Kimberling (KK5762)
Puerto Rican Legal Defense and Educational Fund, Inc.
99 Hudson Street, 14th Fl.
New York, New York 10013
(212) 219-3360

APPENDIX B
TO MEMORANDUM OF LAW

Lopez intervenors ask this court to take judicial notice of the following laws and facts:

In elections to the First and Second Congresses (1789-1793), the First Congressional District was comprised of Kings, Queens, Richmond, and Suffolk Counties.[1]

In elections to the Third through the Fifth Congresses (1793-1799), the Second Congressional District contained Kings, Queens and Suffolk Counties. The Third Congressional District was made up of Richmond and Westchester Counties.[2] [3]

---

[1] Act of Jan. 27, 1789, ch.2, 12th sess., Laws of New York 12.

[2] Until the second half of the 19th century, the Bronx was a part of Westchester County. In 1898, the official consolidation of New York City took place which resulted in the joining of Manhattan Brooklyn, Queens, Staten Island and the Bronx to make up New York City. From 1898 until 1912, the Bronx became its own borough but not its own county and remained a part of New York County. In 1912, the New York State Legislature established the County of the Bronx. Therefore, in descriptions of congressional districts, until 1898, the Bronx is included in

In elections to the Sixth and Seventh Congresses (1799-1803), the First Congressional District was comprised of Kings, Queens, Richmond and Suffolk Counties. The Second Congressional District contained the City and County of New York with the exception of Ward 7 (approximately Midtown Manhattan). Ward 7 in Manhattan was then paired with parts of Orange County and Westchester County.[4]

In the election to the Eighth Congress (1803-1805), Queens and Suffolk Counties made up the First Congressional District. The Second Congressional District contained Kings and Richmond Counties along with parts of Manhattan.

Westchester County. (The Encyclopedia of New York City. Ed. Kenneth T. Jackson, Yale University Press, New York Historical Society, 1995, p. 142-145.)

3 Act of Dec. 18, 1792, ch. 5, 16th sess., Laws of New York 386.

4 Act of March 28, 1797, ch. 51, 22nd sess., Laws of New York 362.

The rest of Manhattan was placed within the Third Congressional District. Rockland and Westchester Counties were paired to make up the Fourth Congressional District.[5]

In elections to the Ninth and Tenth Congresses (1805-1809), the Second and Third Congressional Districts were plural districts with each electing two representatives. The two districts contained Richmond County, Kings County, and the City and County of New York. Rockland and Westchester Counties continued to make up the Fourth Congressional District.[6]

In elections to the Eleventh and Twelfth Congresses (1809-1813), the First Congressional District was comprised of

---

[5] Act of March 30, 1802, ch. LXXII, 25th sess., Laws of New York 32.

[6] Act of March 23, 1804, ch. XIX, 27th sess., Laws of New York 468.

Kings, Queens and Suffolk Counties. The Second Congressional District was a plural district with each electing two representatives and contained the City and County of New York, Richmond and Rockland Counties. The Third Congressional District included Orange and Westchester Counties.[7]

In elections to the Thirteenth through the Seventeenth Congresses (1813-1823), the First Congressional District was a plural district with each electing two representatives and was made up of Suffolk, Queens, Richmond and Kings Counties along with parts of Manhattan. The Third Congressional District included Westchester and Rockland Counties.[8]

---

[7] Act of April 8, 1808, ch. CLXX, 31st sess., Laws of New York 350.

[8] Act of June 10, 1812, ch. XII, 35th sess., Laws of New York 218. Act of April 10, 1818, ch. CXX. Act of March 9, 1821, ch. LXXXIV.

In elections to the Eighteenth through Twenty-Second Congresses (1823-1833), Queens and Suffolk Counties made up the First Congressional District. The Second Congressional District included Kings, Richmond and Rockland Counties. The Third Congressional District was a plural district, electing four representatives and consisted of the City and County of New York. Putnam and Westchester Counties made up the Fourth Congressional District.[9]

In election to the Twenty-Third through the Twenty-Seventh Congresses (1833-1843), the First Congressional District included Queens and Suffolk Counties. The Second Congressional District was comprised of Kings, Richmond and Rockland Counties. The City and

---

[9] Act of April 17, 1822, ch. CCL, 45th sess., Laws of New York 277.

County of New York made up the Third Congressional District and elected four members, while the Fourth Congressional District included Putnam and Westchester Counties.[10]

In elections to the Twenty-Eighth through the Thirty-Second Congresses (1843-1853), the First Congressional District was comprised of Suffolk and Queens Counties. The Second Congressional District consisted of Richmond and Kings Counties. The Seventh Congressional District contained Westchester and Rockland Counties.[11]

In elections to the Thirty-Third through the Thirty-Seventh Congresses (1853-1863), the First Congressional District was made up of Suffolk, Queens,

---

[10] Act of June 29, 1832, ch. 334, 55th sess., Laws of New York 584.

[11] Act of Sept. 6, 1842, ch. 325, 65th sess., Laws of New York 410.

Richmond County and parts of Brooklyn. The Fifth Congressional District consisted of parts of Manhattan and Williamsburg which is part of Brooklyn. Westchester, Rockland and Putnam Counties made up the Ninth Congressional District.[12]

In elections to the Thirty-Eighth through the Forty-Second Congresses (1863-1873), the First Congressional District contained Suffolk, Queens and Richmond Counties. The Tenth Congressional District included Westchester, Rockland and Putnam Counties.[13]

In the election to the Forty-Third Congress (1873-1875), the First Congressional District was made up of Suffolk, queens and Richmond Counties.

---

12 Act of July 10, 1851, ch. 499, 74th sess., Laws of New York 937. Act of April 17, 1854, ch. 385, 77th sess., Laws of New York 905.

13 Act of April 23, 1862, ch. 454, 85th sess., Laws of New York 819.

The Eleventh Congressional District included Westchester, Rockland and Putnam Counties.[14] Congresses (1875-1885), Suffolk, Queens and Richmond Counties comprised the First Congressional District.[15]

In elections to the Forty-Ninth through the Fifty-Second Congresses (1885-1893), the First Congressional District was comprised of Richmond, Suffolk and Queens Counties. The Fourteenth Congressional District included the Bronx and Westchester County.[16]

In elections to the Fifty-Third through the Fifty-Seventh Congresses (1893-1903), the First Congressional

---

[14] Act of May 6, 1872, ch. 619, 95th sess., Laws of New York 1478.

[15] Act of June 18, 1873, ch. 798, 96th sess., Laws of New York 1204.

[16] Act of May 16, 1993, ch. 424, 106th sess., Laws of New York 595.

District was made up of Suffolk and Queens Counties. Richmond County and part of Manhattan were combined to make up the Seventh Congressional District. The Bronx and Westchester County made up the Sixteenth Congressional District.[17]

In elections to the Fifty-Eighth through the Sixty-Second Congresses (1903-1913), the First Congressional District was comprised of Suffolk and Nassau Counties along with parts of Queens County. The Eighth Congressional District paired Richmond County with parts of Manhattan. The Fourteenth Congressional District included both Manhattan and Queens.[18]

In elections to the Sixty-Third and Sixty-Fourth Congresses (1913-1917),

---

[17] Act of April 13, 1892, ch. 295, 115th sess., Laws of New York 614.

[18] Act of April 27, 1901, ch. 591, 124th sess., Laws of New York 1429.

Suffolk and Nassau Counties, along with parts of Queens made up the First Congressional District. The middle section of Queens was paired with the eastern section of Brooklyn to make up the Ninth Congressional District. The Eleventh Congressional District was made up of Richmond County and a portion of the West Village of Manhattan. The Twenty-Second and Twenty-Third Congressional Districts were comprised of parts of Manhattan and the Bronx.[19]

The congressional districts for the election to the Sixty-Fifth Congress (1917-1919), remained the same as the districts in the elections to the Sixty-Third and the Sixty-Fourth Districts with the exception of the Ninth and Tenth Districts. While the specific district

---

[19] Act of Oct. 18, 1911, ch. 890, 134th sess., Laws of New York 2621.

lines were changed, the Ninth Congressional District still included parts of Brooklyn and Queens.[20]

In elections to the Sixty-Sixth and Sixty-Seventh Congresses (1919-1923), the First Congressional District was still made up of Suffolk and Nassau Counties along with parts of Queens. Parts of Brooklyn and Queens were joined together to make the Ninth Congressional District. Richmond County and parts of Manhattan were joined together to make up the Eleventh Congressional District. The Twenty-Second Congressional District joined the Bronx with Manhattan.[21]

In elections to the Sixty-Eighth through Seventh-Second Congresses (1923-1933), the congressional districts

---

[20] Act of April 20, 1915, ch. 340, 138th sess., Laws of New York 1039.

[21] Act of June 9,1917, chs. 797, 799, 140th sess., Laws of New York 2631, 2652.

remained the same as they did in the previous elections with the exception of the Eleventh, Twelfth, Thirteenth and Fourteenth Congressional Districts. The Eleventh Congressional District joined Richmond County with parts of Manhattan, while the Twelfth through the Fourteenth Congressional Districts all contained parts of Manhattan.[22]

In elections to the Seventy-Third through the Seventh-Eighth Congresses (1933-1945), the congressional district lines remained the same, but in the First, Second, Nineteenth, and Twentieth through Fortieth Congressional Districts (as described in elections to the Sixty-Third and Sixty-Fourth Congresses), two representatives were elected at-large. Two representatives were also elected in

---

[22] Act of April 13, 1922, ch. 636, 145th sess., Laws of New York 1745.

at-large elections in the Third through the Tenth, Fifteenth through the Eighteenth, Twenty-First through Twenty-Third Congressional Districts (as described in elections to the Sixty-Sixth and Sixty-Seventh Congresses) and in the Eleventh through Fourteenth Congressional Districts (as described in elections to the Sixty-Eighth through Seventy-Second Congresses).[23]

In elections to the Seventh-Ninth through the Eighty-Second Congresses (1945-1953), Richmond County was again paired with parts of Manhattan to comprise the Sixteenth Congressional District.[24]

In elections to the Eighty-Third through the Eighty-Seventh Congresses

---

[23] Act of June 18, 1929, ch. 28 vol. 46, United States Statutes At Large 21. Act of Aug. 8, 1911, vol. 37 United States Statues AT Large 13.

[24] Act of May 19, 1942, Ch. 904, Art. 7, § 111, 165th sess., Laws of New York 1956. Act of April 10, 1944, ch. 726..

(1953-1963), the Eleventh Congressional District paired the western sections of Queens with the southeastern parts of Brooklyn. The Fifteenth Congressional District included Richmond County and parts of Brooklyn.[25]

In elections to the Eighty-Eighth through the Ninetieth Congresses (1963-1969), the Sixteenth Congressional District contained Richmond County and parts of Brooklyn.[26]

In the election to the Ninety-First Congress (1969-1971), Richmond County and sections of Brooklyn were joined to comprise the Sixteenth Congressional District. The Twenty-Third Congressional

---

[25] Act of Jan. 24, 1952, ch. 3, § 111, 175th sess., Laws of New York 4. Act of March 29, 1952, ch. 337.

[26] Act of Nov. 10, 1961, ch. 980, Laws of New York 1682.

District included both parts of the Bronx and Manhattan.[27]

In the election to the Ninety-Second Congress (1971-1973), the Eleventh Congressional District paired southeastern Queens with south central Brooklyn and Brooklyn and Queens were placed together in the Twelfth Congressional District. The Sixteenth Congressional District included the southwestern portion of Brooklyn and Richmond County. The Twenty-First Congressional District joined northeastern Manhattan with the southern Bronx and eastern Queens.[28]

In the election to the Ninety-Third Congress (1973-1975), the Tenth Congressional District joined the southeast Bronx with northern Queens. In

---

[27] Act of Feb. 26, 1968, ch. 8, Art. 7, § 111, 191st sess., Laws of New York 9.

[28] Act of Jan. 23, 1970, ch. 5, 6, Art. 7, § 111, 193rd sess., Laws of New York 8, 25.

addition, other parts of Brooklyn and Queens were joined to make up the Eleventh Congressional District. Richmond County was paired with lower Manhattan to make up the Seventeenth Congressional District.[29]

In the elections to the Ninety-Fourth through the Ninety-Seventh Congresses (1975-1983), the districts all remained essentially the same with some minor line changes in the Twelfth through the Fifteenth Congressional Districts.[30]

In elections to the Ninety-Eighth through the One Hundred and Second Congresses (1983-1993), the Eighth Congressional District paired northern Queens with the eastern sections of the Bronx. The Fourteenth Congressional District included the southwestern part of

---

[29] Act of March 28, 1972, ch. 76-78, Art. 7, § 111, 194th sess., Laws of New York 221.

[30] Act of May 29, 1974, ch. 589, 197th sess., laws of New York 824.

the Brooklyn and Staten Island. The west side of Manhattan was paired with portions of the Bronx to comprise the Seventeenth Congressional District. The Nineteenth Congressional District included eastern sections of the Bronx and parts of Westchester County.[31]

The following are among the current congressional districts in New York City: the Fifth Congressional District includes northeast Queens and northern Nassau and Suffolk Counties; the Seventh Congressional District pairs northern Queens with southern portions of the Bronx; the Eighth Congressional District is comprised of the West Side of Manhattan and southwestern Brooklyn; the Ninth Congressional District includes central Queens and southern Brooklyn; the Twelfth Congressional District matches the Lower

---

[31] Act of May 19, 1982, ch. 112, Art. 7, § 111, Laws of New York 1514.

East Side of Manhattan with parts of Brooklyn and Queens; the Thirteenth Congressional District includes parts of southwestern Brooklyn and all of Staten Island; the Fourteenth Congressional District is comprised of the east side of Manhattan and parts of Brooklyn and Queens; the Fifteenth Congressional District includes northern Manhattan and parts of the Bronx and Queens; the Seventeenth Congressional District matches the northern Bronx with southern portions of Westchester County; and the Eighteenth Congressional District includes parts of the Bronx, Queens and Westchester County.[32]

---

[32] Act of June 11, 1992, ch. 138, 1992 Regular Session, Laws of New York 720.

Appendix I

MEMORANDUM

SUPREME COURT COUNTY

ASQUITH REID, et al. : By SHAW J.S.C.
: Dated June 8,
: 1992

Plaintiffs, :
: Order and
vs. : Judgment
: Index
: #9567/92

RALPH J. MARINO, et al. :

Defendants.

Earlier this year when the New York State Legislature failed to enact a congressional reapportionment plan reducing the number of congressional seats from 34 to 31 and then creating 31 districts equal in population based on the 1990 census, several lawsuits were commenced requesting the judiciary to adopt a redistricting plan. Two suits were instituted in different Federal

District Courts of New York State and consolidated before a 3-judge panel in the Eastern District of New York. Another such action was begun in the Supreme Court, Kings County and assigned to this Justice.

The commencement of this action was accompanied by an order to show cause in which the plaintiffs requested certain injunctive relief. At oral argument of the motion on April 24, 1992, this court dictated a decision and order into the record holding that if the New York State Legislature failed to enact a reapportionment plan by May 4, 1992, the court would undertake this task. The parties were therefore instructed to submit to the court their proposed congressional redistricting plans and accompanying supporting documents and names of proposed independent experts to

serve as referees. The decision and order further provided, however, that if at any time during the course of these proceedings a congressional reapportionment plan were validly enacted by the legislature, the court would entertain an application to dismiss this action.

On May 4, 1992, this court was advised by the attorneys for the parties that the legislature had taken no action with respect to congressional reapportionment, and as of this writing had still not enacted any such plan. This court therefore issued a decision and order the following day, May 5, in which it retained jurisdiction and assumed responsibility, which the legislature had abdicated by their inaction, for the adoption of a congressional redistricting plan, and appointed a panel of three

referees pursuant to CPLR 4001, 4201 et seq. and 4311 et seq. to assist the court in this undertaking. The referees were to hear and report, and submit to this court on or before May 26, 1992 a complete and valid reapportionment plan for the congressional districts of the State of New York. In a subsequent decision and order dated May 14, 1992, a substitution was made for one of the referees. The panel of referees, to whom the court and the People of this State are now indebted for their distinguished public service, consisted of:

Hon. Vincent A. DeIorio
(nominated by the parties)

Dean Frank J. Macchiarola
(nominated by the parties)

Hon. Philip D. Roache
(designated by the court)

Prior to the substitution of one of the referees, the 3-judge federal panel in the Eastern District of New York, issued a preliminary injunction enjoining the parties in that lawsuit from proceeding any further in the action before this court. That decision was appealed to the United States Supreme Court which issued a stay of the injunction, allowing this court to proceed. The United States Supreme Court has not yet ruled on the merits of the District Court's issuance of the preliminary injunction or its denial of a motion to abstain from accepting jurisdiction over reapportionment in favor of the State Court proceeding.

The referees in this matter submitted a preliminary report to this court on June 1, 1992; copies were distributed immediately to the parties and a preliminary hearing was held on June 2,

1992. The final, unanimous report was distributed on June 4, and a hearing held on June 5.

At the June 5th hearing, all parties and subsequent intervenors were given an opportunity to comment on the merits of the redistricting plan proposed by the referees. The court recognizes that no reapportion plan can be perfect in every detail, and none can be drawn that will be satisfactory to everyone. However, upon listening to all of the comments and suggestions on various aspects of the plan, and based upon the court's own examination of the proposed plan, the court finds the plan submitted by the referees to be complete and valid under the constitutions of the United States and the State of New York as well as the Federal Voting Rights Act. The court further concludes that this plan is the

only one presently before any court that fully comports with these requirements and other applicable criteria as set forth in the referees' report. The court adopts the plan in its entirety, unchanged, as the Congressional Reapportionment Plan for the State of New York and hereby promulgates and establishes it to govern the election of Members of Congress at the November 1992 election and subsequent elections. The final report of the referees, embodying this plan, together with all its appendices is annexed to and made a part of this decision and order.

It is further ordered that the defendant New York State Board of Elections, in accordance with its statutory duties, shall forthwith implement the terms of the court's redistricting plan as set forth in the appendix to this decision.

The legislature's failure to perform its statutorily mandated duty in a timely fashion has required the court to appoint referees, who are to be compensated for their labor. The referees have incurred expenses in developing a valid congressional reapportionment plan and have employed various personnel to assist them in completing this task. Therefore, an appropriate order will be entered taxing costs against the legislative defendants for the referees' fees and expenses, the fees and expenses of the experts retained by them and their staff as well as the printing, computer and miscellaneous charges incurred in the production of the referees' report. The referees shall submit an itemization of these fees and expenses forthwith.

Jurisdiction over this matter is retained for the purpose of making any

further orders deemed necessary to ensure the effectuation of this decision and order.

The foregoing constitutes the decision and judgment of the court and the clerk of this court is instructed to enter this order and judgment forthwith.

ENTER,

/S/ James H. Shaw
J.S.C.

CERTIFICATE OF SERVICE

I, Nicole L. Felton, do hereby certify that the foregoing Notice of Entry was served upon the parties on the attached service list in the manner specified on the attached service list on this 10th day of June 1992.

/S/ Nicole L. Felton
Nicole L. Felton, Esq.

Appendix I

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

ASQUITH REID, et al.	:
Plaintiff,	: **FINAL REPORT OF THE REFEREES**
-against-	: Index No. 9567/92
RALPH J. MARINO, et al.	: Name of Assigned Judge HON. JAMES H. SHAW, JR.
Defendants.	

To the HONORABLE JAMES H. SHAW, Justice of the Supreme Court of the State of New York:

We, the Referees appointed by Orders of this Court, made and entered on May 5, 1992 and May 14, 1992, which referred to us to report upon the issues set forth in this case, report that:

1. We caused all parties who appeared in this action to be summoned to appear before us on May 19, 1992. (See

Notice of Hearings attached as Appendix A hereto).

2. The Plaintiffs and Defendants appeared by their respective attorneys as indicated on and in said Notice of Hearings attached hereto.

3. Before proceeding to take proof, we executed and filed our statutory oaths as Referees. (See Oath attached as Appendix B hereto).

4. A transcript of all of the testimony and evidence taken upon the several hearings held before us and copies of all submissions and exhibits taken and received are filed with this report. (See Schedule of Record attached as Appendix C hereto).

5. On June 1, we submitted to the court the "Referees' Plan". That document and the accompanying appendices are on file with the court.

6. In response to the charge of this Court's Orders, we have prepared and herewith submit for your consideration our Report containing a complete and valid, unanimously recommended Referees' Reapportionment and Redistricting Plan ("Referees' Final Plan") for the Congressional Districts of the State of New York. The proposed Referees' Final Plan is fully set forth in the pages that follow.

7. We have reviewed this Plan for compliance with the constitutional one person, one vote requirements of Art. I §2 and, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and with the equal protection and non-dilution standards of the Voting Rights Act, 42 U.S.C. 1973, et seq., and the Fourteenth and Fifteenth Amendments to the United States

Constitution. In each case, the methodologies to assure full compliance with the Voting Rights Act and the constitutional equal protection standards, as outlined in the proposed Referees' Plan, have been incorporated as elements in the judgments reached by the Referees.

8. In each jurisdiction covered under sections 4 and 5 of the Voting Rights Act, and elsewhere in the State of New York where the minority populations were large and compact enough, the maximum number of districts which achieve "effective minority voting equality" have been created. Where necessary to assure non-retrogression of minority representation, districts with minority population percentages in excess of the percentage set for effective voting equality were created from among the districts which already contained

sufficient minority population to achieve effective minority equality. In no jurisdiction is there dilution of majority voting rights. In sum, the reapportionment and redistricting plan devised under our direction provides fair and effective representation for all of the citizens of the State of New York.

I. INTRODUCTION

A. Appointment of Referees

On May 5, 1992, the Honorable Judge James H. Shaw, Jr. of the New York State Supreme Court, Kings County, appointed the Honorables Vincent A. DeIorio, Frank J. Macchiarola, and Philip D. Roache to serve as a panel of referees in this action. The Honorables Vincent A. DeIorio and Frank J. Macchiarola were nominated by the parties. See Report of Referees submitted to this Court on June 1, 1992 (hereinafter, "June 1, 1992 Report"). Judge DeIorio is a former member of the New York State Court of Claims and is currently practicing law in Manhattan and White Plains, New York. Dr. Macchiarola is the Dean of Benjamin N. Cardozo Law School, Yeshiva University, and the former Chair of the New York City Districting

Commission.[1] The Honorable Philip D. Roache, professor of law at St. John's University School of Law and former judge in the New York State Family Court in New York County, was designated by the court.

The Referees filed and executed their oath on May 19, 1992. See June 1, 1992 Report, Exhibit 2. (Appendix B hereto). Judge Shaw directed the Referees to "assist the Court in the formulation of a comprehensive reapportionment plan" and submit a "complete and valid reapportionment plan for the Congressional Districts of the State of New York" by May 26, 1992.[2] The Court also directed the

---

[1] By order dated May 14, 1992, Dean Macchiarola was nominated after the Honorable Milton Mollen recused himself due to a conflict of interest. See June 1, 1992 Report, Exhibit 2.

[2] On May 15, 1992, the Honorable Frederick B. Lacey, the Special Master appointed by the three-judge court in the federal New York State Congressional redistricting case, Puerto Rican Legal Defense and Education Fund, Inc. ("PRLDEF"), et al., v. Waring, et al., CV-92-1776 (SJ), requested exclusive use of the New York State Task Force on Demographic Research and Reapportionment ("Task Force") computer

Referees to set forth the criteria underlying the plan they recommend for adoption and the reasons for the recommendation.

Upon appointment, the Referees met and, with Court approval, retained consultants and employed staff to expedite their work. Dr. Alan Gartner, Director of Research for The Graduate School and University Center, The City University of New York; Professor Michael Petrides, The College of Staten Island, The City University of New York; and Professor Wendy R. Brown, Tulane Law School, were

---

system until the completion of his redistricting plan. On May 19, the parties in this action met with Special Master Lacey and his staff. An agreement was reached which gave the state court consultants and staff only limited access to the computer system until Monday, May 25. In light of this, Judge Shaw agreed to extend our deadline for submission to June 1, 1992. The Referees' staff and consultants appreciate the spirit of cooperation in which Judge Lacey's staff worked with us.

retained by the Referees as expert consultants.

B. Proceedings Before the Referees

On May 19, 1992, the Referees, after due notice, held a public hearing at the Kings County Supreme Court. See June 1, 1992 Report, Exhibit 1. (Appendix A hereto). The hearing was continued on May 21, 1992, at 270 Broadway in Manhattan. Each party was asked to present and give

---

Professor Brown was retained after Dr. Esmeralda Simmons recused herself due to a conflict of interest (See Transcript of Hearing, May 19, 1992 at 202). Other staff included Dave Buchanan, Anthony Butler, Ze Ming Cheng, Joseph Diaz, Esq., Sandra LeBow, Frank Lewis, Michael Macchiarola, Laura-Jo Malerba, Daniel O'Rourke, Maureen Scaramell, Victoria Ward, and Rosemary Washington. Special thanks are extended to Dr. Herman Jenkins, Director New York City Department of Personnel, and Arlene Pedone for offering their invaluable assistance.

The court ordered the State defendants to provide immediate access to the Task Force data bases containing the proposed plans and other demographic and statistical information and machine operators, one representing the New York State Assembly and one representing the New York State Senate. Special thanks are extended to Daniel Hennessey, Kevin J. Quinn, Mark Radin, Vera Tostanoski and Seth Shapiro and the Task Force Co-Directors, Lewis M. Hoppe and Debra A. Levine.

testimony on their proposed redistricting plan.[4] Exhibits submitted were appropriately marked and made a part of the record.[5] In addition, the Referees reviewed the pleadings and all supplemental exhibits submitted by the parties.[6] Counsel for all parties

---

[4] Transcripts of these proceedings are on file with the Court.

[5] See June 1, 1992 Report, Schedule of Record, Exhibit 3.

[6] A substitute Affidavit of Wayne C. Winborne, describing the amended plan of the Majority Coalition for Fair Reapportionment ("Majority Coalition"), was submitted to the Referees on May 21st by Paul Wooten, counsel for plaintiff Cogressman Major Owens. See June 1, 1992 Report, Exhibit 5. Greg M. Marshberg, counsel for defendants Marino, Skelos, and the State Senate submitted "Preliminary Report on Racial Bloc Voting and Political Mobilization in New York City, As It Affects Proposed Congressional Districts," prepared by Professor James Loewen of the University of Vermont. The report analyses the proposed Senate Plan as to the districts in counties covered under section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973. See June 1, 1992 Report, Appendix E. Congressman John J. LaFalce submitted a proposed plan for Upstate New York by letter dated May 21, 1992, and addressed to Professor Roache. See June 1, 1992 Report, Appendix F). A submission was made to the Referees by plaintiff Congressman Edolphus "Ed" Towns on Tuesday, May 27, proposing adjustments to the plan submitted by the other parties. See June 1, 1992 Report, Appendix G. Further submissions were made by Nat Lewin, counsel for

presented arguments in support of their plans.

Four plans have been submitted to the Referees for consideration.[7] The four plans have been listed below, along with the corresponding name that will be used in this Report:

1. The Reid Congressional Plan, submitted on behalf of Plaintiff Asquith Reid,[8] will be referred

---

plaintiff-intervenors Council of Jewish Organizations of Boro Park, et al., on May 29, 1992, (June 1, 1992 Report, Appendix H) and David Wells, Esq., (June 1, 1992 Report, Appendix I).

On request, Special Master Frederick B. Lacey provided the Referees with the plan submitted to him by Puerto Rican Legal Defense Fund ("PRLDEF"). The PRLDEF Plan creates two majority Hispanic districts in the City of New York. This plan will be referred to in comparison to those portions of the plans submitted by the parties herein that create majority Hispanic districts in their efforts to satisfy the Voting Rights Act. See June 1, 1992 Report, Appendix J.

In a letter to Judge Shaw dated May 4, 1992 (See June 1, 1992 Report, plaintiff Exhibit 3a), counsel for Plaintiff Reid states, "We should note that our Plan is submitted solely on behalf of Plaintiff Reid and is not necessarily endorsed by the other plaintiffs."

to as the "Reid Plan." See June 1, 1992 Report, Appendix A.

2. The plan submitted by Plaintiff Congressman Major Owens and prepared by the Majority Coalition for Fair Reapportionment, will be referred to as the "Owens Plan." See June 1, 1992 Report, Appendix B.

3. The plan submitted by Defendants New York State Assembly shall be referred to as the "Assembly Plan." See June 1, 1992 Report, Appendix C.

4. The plan submitted by the Defendant New York State Senate will be referred to as the "Senate Plan." See June 1, 1992 Report, Appendix D.

Each plan is evaluated in Part IV in terms of the criteria discussed below in Part III.

Edward Costikyan, counsel for Plaintiffs, explained the procedural posture that resulted in the case coming before this court and indicated that the Assembly and the Senate were not as far from agreement as their submitted plans might indicate. In furtherance thereof, he introduces two New York Times articles indicating that, in reality, there was only one disputed district preventing compromise. See June 1, 1992 Report, Exhibits 1 and 2.

Mr. Harper, also counsel for the Plaintiffs, explained that his clients are comfortable with both the Assembly Plan and the Majority Coalition Plan. He then introduced a third plan on behalf of Plaintiff Asquith Reid. Since Western New

York experienced the greatest population loss, a district was consolidated in this area. The district that ran along the north shore of Long Island was eliminated. A Queens district was stretched into Nassau County to capture a concentration of African-Americans into a minority district. A tri-borough district was created in Manhattan, Queens, and The Bronx. This district is 60% Latino, and its territory is contiguous.

Mr. Harper then went on to explain some of the weaknesses of the Senate Plan as he saw them. He alleged that the Latino community does not support the Senate's proposed third Latino district. According to Mr. Harper, (a) the district will dilute the Latino population sufficiently to endanger the election of the Latino community's chosen representatives; (b) the plan preserves

the seats of all incumbent Republicans, while pitting four pairs of incumbent Democrats against each other; (c) the plan does not create contiguous districts; (d) the plan puts a large block of white voters in Major Owens' district, thereby endangering that district's incumbent minority candidate; and (e) the plan weakens Congressman Serrano's current district by decreasing the percentage of Puerto Rican voters.

The Majority Coalition Plan, a group representing African-American, Latino, and Asian communities in New York City, was then introduced on behalf of Major Owens, by attorney Paul Wooten and Eddie Baca, one of the drafters of the plan. The plan only considers New York City, and focuses on the minority districts therein. Mr. Wooten stated that the Majority Coalition Plan has 0% population deviation. A tri-

borough Latino district with no incumbent is created. This district is also 17% Asian. The second Latino district is located in The Bronx. The Nassau County concentration of African-Americans is placed in a minority district in Queens. The Jewish communities in Williamsburg, Boro Park, and Grand Street are kept intact. Incumbent Congressmen Weiss and Green are put in the same district, creating a "fair fight" between a Democratic and Republican incumbent. A 66% total population white district in Queens contains a 16% Asian population.

Mr. Wooten further explained several other relevant factors taken into consideration in creating the plan. The large concentration of Caribbean Blacks necessitates a "super-majority" of minority voters in the Central Brooklyn district, as these individuals generally

either do not (low turnout) or cannot vote because of non-citizenship status. The creation of a third Latino district would jeopardize the election of the Latino communities' chosen candidates in the remaining two Latino districts. The Majority Coalition Plan is based on voting-age population and voter turnout data. This is especially important in New York City where there is very little racial crossover voting.

Next, Assistant Attorney General Joel Graber spoke on behalf of Governor Mario Cuomo. The Governor's representative noted that the reapportionment process is a State legislative responsibility and, despite the abdication of that responsibility, every effort should be made to build on the areas already agreed upon by the Legislature. He also explained the Governor's belief that since

it is the State's responsibility to draw redistricting lines, it would be preferable to have a State court, rather than a federal court, draw such lines.

Attorney Michael Carvin then presented the Senate Plan. The plan has 0% population deviation. He stated that current Census data requires that there be a third Hispanic district in New York City to comply with the Voting Rights Act. This is the only plan that has a third Hispanic district. The plan strives to concentrate Hispanics and Blacks in separate districts. This is done in response to evidence that these communities do not share the same political interests. The Senate Plan has adequate percentages to elect a minority representative in each of the minority districts. For example, Congressman Rangel's current district for the first

time combines the African-American communities of Harlem and Melrose to form a district that has a Black majority. Mr. Carvin then answered the charge of partisanship with a counter-accusation of the same. He argued that the Senate Plan is the only one that will pass Voting Rights Act § 5 preclearance requirements.

Mr. Carvin explained that this plan did in fact receive Latino support, and he criticized the disparity between minority populations in the Owens and Towns districts as unnecessary. He also criticized the breaking of the Nassau County line and the creation of the long, narrow "Solarz district" as a partisan maneuver. Finally, the Senate upstate districts were justified in order to keep the city of Buffalo in one district.

An effort was made by the Referees to discern areas of consensus that were not

contained in the submitted plans. The polling of the Legislature was urged by counsel for the Plaintiffs in order to do this. The Referees then discussed a possible joint presentation by the Legislature to further this end of identifying consensus. Counsel for both the Assembly and the Senate defendants were urged to go back to their clients and push for compromise and come back with an idea of the state of negotiations between both houses.

After recess, a document commenting on the various plans, submitted on behalf of Congresswoman Louise M. Slaughter, was introduced by her attorney, Richard A. Palumbo.

Daniel Chill, Esq. made a presentation on behalf of the New York State Assembly. Mr. Chill stressed the need for super-majority districts in order

to allow for minority chosen candidates and the importance of maintaining current minority seats (as seniority is so important in Washington). He indicated that the Senate Plan would possibly jeopardize the seats of minority Reps. Owens, Towns, Serrano, and Rangel. He also pointed to the Senate Plan as nakedly partisan. Mr. Chill then indicated that the two sides were not close to an agreement. The Referees emphasized to the respective counsels to urge their clients towards compromise.

Dr. Roman B. Hedges, a member of the Legislative Task Force, thereafter testified as to the substance of the Assembly Plan. The plan was created with a view towards the racially polarized voting patterns of New York City, the generally low voter turnout among minorities, and the importance of the

party primary system in New York State politics. The plan consciously attempts to include high concentrations of the Asian community in the same district. There is a substantial possibility that if the Senate Plan were adopted, Representative Owens could be defeated by a white-chosen candidate due to the large Caribbean population. He further testified that the plan reflects partisan fairness and complies with the Voting Rights Act. The relevant districts created by the plan reflect the racial voting pattern differentials to ensure that a minority candidate will be elected.

Attorney Nathan Lewin intervened on behalf of several Jewish organizations in Brooklyn. He urged the Court to preserve the traditional Jewish communities of interest. He also emphasized the point that the Court should look to local issues

of State policy and ground its decision in State law, so as to insulate the decision from federal review. He concluded by stating that the Majority Coalition Plan and the Reid Plan satisfy State law and policy.

The Referees adjourned and reconvened on May 21, 1992 at 270 Broadway, the offices of the Assembly Minority. Judge DeIorio reported that he had been in contact with Special Master Lacey, who has been charged with drawing the congressional district lines in the federal court action. Judge Lacey requested several members of his staff to be present and to coordinate the use of the existing computer facilities. These are the facilities of the Legislative Task Force on Demographic Research and Reapportionment. We relied on their equipment, software, and data base whose

accuracy we could not independently verify. A schedule for computer use was agreed upon and it was decided that the Referees would use 270 Broadway as our base of operations until the Special Master finished using the Task Force offices at 250 Broadway. It was also agreed that the Referees would limit their use of the computers at the outset, thereby allowing Judge Lacey to complete his work. Judge Lacey also came to the hearing and shared his thoughts and ideas with the Referees at an informal meeting.

Mr. Wooten returned for the Majority Coalition and introduced documents that explained their plan. The record was also cleared with respect to exactly what the Majority Coalition exhibits represented.

The Referees directed their consultants to review the proposed redistricting plans and all supporting

documents in keeping with the Court's mandate to submit a "complete and valid" plan. The Referees further directed that if none of the proposed plans appeared adequate, the consultants should craft an alternative plan for the Referees to consider. This Report proposes a single and complete alternate plan and is respectfully submitted for consideration and adoption by the Referees.

II. CONCLUSIONS AND RECOMMENDATIONS

The purpose of this Final Report of the Referees is to inform the Court of the principles and values used in assisting in the creation of the proposed Referees' Final Plan, including a narrative description of the plans submitted to the Court for its consideration and of the Referees' Final Plan. It is our opinion that the proposed Referees' Final Plan fully comports with the mandates of the

United States Constitution, the Voting Rights Act of 1965, the New York State Constitution, and other applicable standards.

We have reviewed the proposed plans and expert reports; affidavits and exhibits; testimony and the arguments of counsel; the numerous maps, charts, statistics, computers runs describing and comparing those plans; consulted with other experts;[9] and considered all relevant rulings of the Court and the Referees. Based on this review, we conclude that while each plan has merit, the Referees should not recommend that the Court accept in its entirety any of the plans submitted by the parties. Instead, we recommend

---

[9] Wayne Winborne and Doris Koo from the Majority Coalition appeared before the consultants on May 22 to explain various aspects of their plan. Dr. Herman Jenkins, formerly Director of Technical Operations, New York City Districting Commission, met with individual consultants. Their assistance has proven invaluable.

that the Court adopt the alternative plan that we have formulated.

In this Final Report, we explain in detail the mandatory legal criteria, and other relevant factors, and how they interact. Second, we describe and analyze each plan submitted to us in light of those criteria and explain why we believe that these plans fall short of satisfying fully the criteria applied.[10] Third, we describe the analytical methodologies employed to ensure that the plan submitted by us to this Court comply with the criteria. Next, we describe our proposed plan (the Referees' Final Plan) district by district and set forth our rationale

---

[10] It should be clear that each of the plans submitted was viewed by us as well thought out. The parties have spent months preparing their plans and have clearly taken seriously their Constitutional and statutory obligation to the citizens of this state. Therefore, we will acknowledge, where appropriate, the extent to which we considered portions of each plan to create the Plan proposed herein.

for this proposal. Before concluding, we describe the plan submitted to the three-judge court in PRLDEF v. Waring by Special Master Lacey.

III. CRITERIA

The plans submitted and our proposed plan were analyzed and compared using the following criteria:

The one person, one vote standard of the United States Constitution.

The Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, et seq.

Public interest criteria including contiguity, compactness, traditional boundaries in the State, communities of interest, and political fairness.

Before discussing each of these criteria in full, it should first be noted that the following relevant facts and issues are not in dispute:

1. According to the 1990 Census figures, New York State's population has grown to 17,990,455.

2. Although the State's net population increased between 1980 and 1990, New York State has lost three congressional seats, in the upcoming 103rd United States Congress, going from 34 to 31, because of national shifts in population.[11]

3. The ideal size of a district is 580,337.50 persons.[12]

---

[11] The population in New York State grew at a rate less than the national average. This accounts for the loss of congressional seats.

[12] Since no fractional person exists, an absolute perfect zero population deviation is impossible for the New York State 1992 congressional districts. Thus, the lowest possible deviation is one person, or 0.0000017 percent. The deviations in the proposed plans in this action range from this minimum up to 0.00005 percent. See June 1, 1992 Report, Appendix K. (Appendix D hereto).

4. No new congressional reapportionment or redistricting has taken place since 1982.

5. The New York State Legislature has failed to adopt a new congressional redistricting plan.

6. Voting Age Population ("VAP"), as opposed to the total population, should be examined to determine whether or not a proposed district constitutes an effective minority district. Solomon v. Liberty County, 899, F2d. 101, 108 (11th Cir. 1990).[13]

---

[13] In his Report to the Special Master by the Independent Expert in the Florida redistricting case, DeGrandy et al. v. Wetherell, Case No. 92-40131-WS, Professor David Gelfand, Tulane Law School, used VAP as a commonly accepted measure for determining the effectiveness of minority voting strength in a proposed districts. See Flateau v. Anderson, June 1, 1992 Report, Appendix L, discussing analytic concepts used by Dr. Bernard Grofman, court-appointed Special Master in that matter. As explained herein, we have also used the

7. All plans contain at least three districts in which a majority of VAP is Black, and at least one in which 50% of VAP is Hispanic.

8. Three New York City counties - New York, Kings, and Bronx -- are "covered" by the formulas contained in section 4 of the Voting Rights Act, 42 U.S.C. § 1973(b) (1982). Therefore, if the Legislature had passed a congressional redistricting plan, the plan would require "preclearance" by the United

---

estimated registration by race data and surname analysis to determine more precisely the effective voting equality of the minority districts proposed in our plan as well as the four plans submitted to the court. (See infra, n.32). See generally, F. Macchiarola and J. Diaz, "The 1990 Districting Commission: Renewed Opportunity for Participation or Race Based Gerrymandering?" 14 Cardozo Law Review, forthcoming, (Summer, 1992) (Districts of less than 80% combined minority voting age population and at least a majority of one "minority" group will generally not be able to exercise their right to elect a candidate of preference in New York City Council elections).

States Attorney General or the United States District Court for the District of Columbia under section 5 of the Act. See 42 U.S.C. § 1983c: 28 C.F.R. § 51.60(a), (b), & (c) (1990).

A. Primary Criteria

Federal law mandates that congressional redistricting plans must meet two primary requirements: the one person, one vote standard and the racial fairness standard. See, e.g., Hastert v. State Board of Elections, 777 F. Supp. 634 (N.D. III. 1991); Major v. Treen, 574 F. Supp. 325, 342 n. 22 (1983) (three-judge court); In re Constitutionality of Senate Joint Resolution 2G, Special Apportionment Session 1992, No. 79674, slip op.3, 12-13 (Fla. May 13, 1992); In re Reapportionment of the Colorado General Assembly, 1992 WL 48569 (Colo., Mar. 13,

1992); Wilson v. Eu, 823 P.2d 545, 549, 551 (Cal. 1992).

1. Equally Populous Districts

To satisfy the one person, one vote requirement, a state's congressional districts must be drawn so that their populations are equal. Wesberry v. Sanders, 376 U.S. 1 (1964) (interpreting U.S. Const. Art. 1, § 2). An accepted measure in considering the constitutionality of apportionment plans is that of maximum percentage deviation from population mean. Abate v. Mundt, 403 U.S. 182 (1971). The maximum percentage deviation is determined by adding the percentage deviation above the population mean of the district with the greatest number of voters to the percentage deviation below the population mean of the district with fewest number voters. See Flateau v. Anderson, 537 F. Supp. 257, 261

(S.D.N.Y. 1982). Even de minimis deviations from exact population equality may be unacceptable, unless the deviations are necessary to achieve some critical state objective. See also Gaffney v. Cummings, 412 U.S. 735, 744 (1973) (deviation must be related to furthering "rational state policy"); Kirkpatrick v. Presiler, 394 U.S. 526, 531 (1969) (only those population variances "which are unavoidable despite a good faith effort to achieve absolute equality or for which justification is shown" will be accepted).

The New York State Legislature has failed to adopt a congressional redistricting plan; therefore, any plan selected or produced by the New York State Supreme Court will be a court-made plan and should have only the most minimal deviation. See Karcher v. Daggett, 462 U.S. 725, 730 (1983) (rejecting deviation

of less than .07%); Conner v. Finch, 431 U.S. 407, 414 (1977); Chapman v. Meier, 420 U.S. 1, 26-27 (1964); Hastert, 777 F. Supp. at 644 (rejecting plan with a deviation of .00297%). As several plans introduced in this case have demonstrated, a bare minimum deviation of one person is technologically possible for New York State's congressional districts. Therefore, the plan adopted by the New York State Supreme Court should meet that standard, unless a greater deviation is necessary to ensure racial fairness. See Hastert, 777 F. Supp., at 644.

2. Racial Fairness

The primary purpose of the Voting Rights Act of 1965, 42 U.S.C. § 1973, et seq. (the "Act"), is to protect the right of racial and ethnic minorities to vote as guaranteed by the fourteenth and fifteenth amendments to the United

States Constitution. Chisom v. Roemer, ___ U.S.___; 111 S.Ct. 2354 (1991) Thornburg v. Gingles, 478 U.S. 30 (1986); Hastert v. State Board of Elections, 777 F. Supp. 634 (N.D. Ill. 1991); Wilson v. Eu, 823 P.2d 545 (Cal. 1992). The Act prohibits states and their political subdivisions from denying or abridging the rights of citizens to vote "on account of race or color" (§§ 2(a), 5, 42 U.S.C. §§ 1973(a), 1973(c)), or membership in a "language minority group" (§ 4(f)(2), 42 U.S.~~C.~~ § 1973b(f)(2)). The Act is the "supreme law of the land" (U.S. Const., Art. VI, cl.2), and supersedes any conflicting State laws or Constitutional provisions. Wilson v. Eu, 823 P.2d at 562 (quoting "Report and Recommendations of Special Masters on Reapportionment").

Thus, a Court-made plan must not have the intent nor effect of diluting the

votes of racial or language minorities. See Ketchum v. Byrne, 740 F.2d 1398, 1407 (7th Cir. 1985); Garza v. City of Los Angeles, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S.Ct. 681 (1991); Rybicki v. State Board of Elections, 574 F. Supp. 1082, 1109 (N.D. Ill. 1987) (three-judge court). That is, it must protect minority voting strength. See S. Rep. No. 417, 97th Cong., 2d Sess. 27 (1982) (Senate Report on 1982 Amendments to the Voting Rights Act), reprinted in 1982 U.S. Code Cong. & Admin. News 177, 204 [hereinafter "Senate Report"]; Ketchum v. Byrne, 740 F.2d at 1412; United Jewish Organizations v. Carey, 430 U.S. 144 (1977); Garza, 918 F.2d at 776; Hastert, 777 F. Supp. at 650-51.

Two sections of the Act directly effect the preparation of this redistricting plan. Section 2, as amended in 1982,

has two subsections.[14] The other relevant section of the Act is section 5, 42 U.S.C. § 1973c.[15] Section 5 requires that any proposed change in voting laws, "practices or procedures," including redistricting plans, affecting "covered jurisdictions" under section 4(b) of the Act must be precleared by the United States Attorney General or authorized by a declaratory judgment of the United States District Court for the District of Columbia prior to implementation of the proposed change.

---

[14] Subsection 2(a) prohibits the use of any voting procedure that "results in a denial or abridgment" of the voting rights of racial or language minority groups "as provided by subsection (b)."

Subsection 2(b) states that a violation of subsection (a) is established by a showing "based on the totality of the circumstances," that members of a protected class have less than an equal opportunity "to participate in the political process and to elect representatives of their choice."

[15] Section 5 applies to states or countries in which fewer than half of the residents of voting age were registered to vote, or voted in the presidential elections of 1964, 1968, or 1972.

United Jewish Organizations v. Carey, 430 U.S. at 148 (legislative reapportionment is a standard practice or procedure within the meaning of section 5. Approval cannot be granted without a showing that the proposed change has no racially discriminatory effect or purpose. 28 C.F.R. § 51.38(b); 1975 U.S. C.C.A.N. 774, 781-782.

Section 2 of the Act

Most courts have reviewed court-ordered redistricting plans for compliance with section 2. See, e.g., Garza v. County of Los Angeles, 918 F.2d at 776; Edge v. Sumter County School District, 775 F.2d 1509 (11th Cir. 1985). In Wilson v. Eu, the Special Master advised, and the Court agreed, that a court-ordered plan should be drawn "that will withstand section 2 challenges under any foreseeable combination of factual circumstance and

legal rulings." Id., at 563. Therefore, the Referees' Final Plan is drawn to comply with the requirements of section 2.[16]

Section 5 of the Act

In order to avoid further and costly delays in the electoral process, we have taken special steps (as described below in Part IV) to avoid any possible disapproval with respect to the covered counties.

Department of Justice regulations explain that a change

---

[16] In PRLDEF v. Gantt, CV-92-1776 (SJ), the three-judge court directed the Special Master to develop a plan that complies with the Act and specifically with section 2(b). [See, June 1, 1992 Report, Appendix M, Plan and Report of the Special Master, dated May 26, 1992.] See also, "Report and Recommendation of Special Master on Congressional Redistricting Plans" at 12, in DeGrandy v. Wetherell, Case No. 92-40131-WS (all parties and amici agree that section 2 must, at a minimum, be considered in crafting the redistricting plan.) (emphasis supplied); Burton v. Sheheen, No. 3: 91-2983-1, at 44 (D.S.C. May 1, 1992) ("anomalous to adopt a plan which immediately lends itself to attack under section 2")

affecting voting is subject to disapproval under section 5 "if it will lead to a retrogression in the position of members of a racial or language minority group (i.e., will make members of such a group worse off than they had been before the change) with respect to their opportunity to exercise the electoral franchise effectively," citing Beer v. United States (1976), 425 U.S. 125, 103 S.Ct. 1357, 47 L.Ed.2d 629 (see also Lockhart v. United States (1983), 460 U.S. 125, 103 S.Ct. 998, 74 L.Ed.2d 863). (28 C.F.R. § 51.54(a) (1991).) Particular attention is paid to whether the proposed change would comply with section 2. (28 C.F.R. S 51.55 (1991).) Thus, with respect to the three counties covered by section 5, our obligations are to avoid any depletion or deterioration of the voting positions of

racial or language minorities and to comply with section 2 itself.

It is clear that federal court-drawn congressional redistricting plans are not subject to the preclearance provisions of the Act. McDaniel v. Sanchez, 452 U.S. 130, 138 (1981); Beer v. United States, 425 U.S. 130 (1976); Conner v. Johnson, 402 U.S. 690 (1970). Neither the federal Voting Rights Act nor the case law interpreting that statute speaks to the issue of preclearance of a state court-drawn plan.

Application of Section 2

In order to withstand a challenge under section 2 of the Act, a court-drawn redistricting plan must be crafted so as not to dilute the voting strength of racial and language minority voters. The leading case construing section 2 of the Act is Thornburg v.

Gingles, 478 U.S. 30 (1986). Gingles holds that to establish a section 2 violation, a sufficiently large and geographically compact minority group that is politically cohesive[17] must demonstrate that "The white majority votes sufficiently as a bloc to enable it... usually to defeat the minority's preferred candidate." Id., at 51.

We caused to be conducted a preliminary analysis of voter turnout data and registration by race to determine first, whether racial bloc voting could occur in the minority districts proposed and second, whether the proposed districts

---

[17] Black and Hispanic combined and "politically cohesive." See e.g., United Jewish Organization v. Carey, 430 U.S. at 150 n.51 (African-American and Puerto Ricans combined into one minority group in New York City); LULAC v. Midland Independent School District, (shared history of past discrimination and inseparable political goals); Campos v. Baytown, 840 F.2d 1240 (5th Cir. 1988), cert. denied, 190 S.Ct. 3213 (1989) central focus on voting patterns); but see, Romero v. City of Pomona, 883F.2d 1418 (9th Cir. 1989).

were sufficiently large enough to allow minorities to elect the candidate of choice.

Voter turnout data and election results were collected for three elections -- the 1988 Jesse Jackson primary; the 1989 New York City mayoral primary, and the 1991 New York City Council primaries.[18] We reviewed these data in order to develop a realistic estimate of the minority population proportion necessary in each district for "effective minority voting equality" relative to the white voting population.[19] Based on our review of the

---

[18] The question of what type of election to analyze is crucial because the choice of the elections dictates the conclusions reached. Grofman, Handley, and Niemie, Minority Representation and the Quest for Voting Equality: A Social Science Perspective (Cambridge university Press, 1992) (forthcoming). Therefore, the consultants choose to compare those three elections which have different characteristics that are described infra, n. 32.

[19] Professor Bernard Grofman proposed four steps in preparing districting plans which will assure compliance with the racial/linguistic vote dilution prohibition of the Act.

population statistics, registration data, election results[20], and a surname analysis,

---

1. Identify the clusters of minority concentration.
2. Group clusters of minority concentration to form districts with the requisite population size (580,337) with as many districts as possible having "effective minority voting equality" with the white voting population, and with distribution of minority voting strength in the remaining districts done in such a way as to avoid fragmentation.
3. Develop realistic estimates, on a constituency by constituency basis, of the minority population proportions in each district necessary for effective minority voting equality.
4. Prepare final adjustments to district lines so as to create effective minority voting equality wherever possible without fragmenting traditional boundaries; diluting the voting rights of non-minorities; or permitting retrogression in minority representation. See, Report of Professor Bernard Grofman to Special Master in Flateau v. Anderson, 537 F. Supp. 257 (S.D.N.Y. 1982) attached to June 1, 1992 Report as Appendix L.

These steps were employed in the districting of the New York City Council districts. In both 1982 and 1992, the percentage of minority populations in the minority council districts ranged from 70 percent to 96 percent.

[20] Analysis of the 1988 presidential primary and the 1989 mayoral primary election turnout in New York City is not enough to conclude that a minority population or VAP is enough to ensure effective minority voting equality. In these particular presidential and mayoral races, voter turnout was high because of the candidates. In an off-year congressional race, on the other hand, the turnout differential between black and white voters is even higher, with fewer blacks voting. The Counsel for

we believe our proposed Plan would withstand a challenge under the Voting Rights Act.

B. Secondary Criteria

In addition to the two critical statutory and constitutional criteria, several other factors may be considered. These include contiguity, compactness, respect for traditional boundaries (such as county lines), communities of interest, and political fairness.

1. Contiguity

There are no federal or state requirements that congressional districts be contiguous. Wood v. Broom, 287 U.S.I. (1932); Ince v. Rockefeller, 290 F. Supp. 878, 883 (S.D.N.Y. 1968). Article I, section 2, of the federal Constitution

---

Owens suggest that an analysis of the City Council election turnout would also support this proposition, See June 1, 1992 Report, Appendix N.

sets out no such standard. Courts construing this provision have held that contiguity is "appropriate," but they have not held it to be constitutionally mandated. See Dunnell v. Austin, 344 F. Supp. 210, 215 (E. Mich. 1972); David v. Cahill, 342 F. Supp. 463, 469 (D.N.J. 1972). For purposes of state legislative redistricting, contiguity requirements are satisfied by any connected territory including territory separated by water. Schnieder v. Rockefeller, 31 N.Y.2d 420, 430 (1972).

Even though contiguity is not required, the proposed Referees' Final Plan includes no non-contiguous districts. We recommend that any plan adopted by the New York State Supreme Court maintain contiguity, unless inclusion of a non-contiguous district is required to remedy minority vote dilution. CF. Dillard v.

Town of Louisville, 730 F. Supp. 1546 (M.D. Ala. 1980) (inclusion of noncontiguous district not fatal to preclearance).

2. Compactness

The New York State Constitution and statutes are silent on the subject of Congressional reapportionment. However, there are provisions in the State Constitution regarding redistricting of the State Legislature. Article III, § 4, provides in relevant part that districts "shall be... in as compact a form as practicable and shall at all times consist of contiguous territory..." N.Y. Const., Art. III, § 4. In addition, the State election law provides for districts to be in compact form. N.Y Elect. Law, Art. IV, § 4-100(3)(a) (McKinney 1978 and Supp. 1992).[21]

---

[21] Compactness has been construed to include existing boundaries, topographical features,

Of course, these requirements are not binding on this court in its redistricting of federal congressional districts, but they do represent the State Legislature's concerns regarding the creation of legislative districts. Additionally, the compactness and contiguity requirements yield to overriding interests such as one person, one vote requirements. Schnieder, Supra.; In The Matter of Orans, 24 A.D.2d 217.

In one instance, our Plan includes a newly created tri-county Hispanic district which, although not "aesthetically" compact, was drawn in a manner to ensure an effective concentration of Hispanic voters that can

---

and existing means of transportation and lines of communication. Bay Ridge Community Council, Inc. v. Carey, 103 AD2d 280 aff'd, 66 N.Y.2d 657.

elect the candidate of their choice.[22] Districts drawn for the expressed purpose of protecting minority voting strength are permissible. See Dillard v. Baldwin County Board of Education, 686 F. Supp. 1459, 1466 (M.D. Ala. 1988) (aesthetic considerations secondary to relative concentration of the minority population).

3. Communities of Interest[23]

Communities of interest may be relevant to the determination of compactness. The California Supreme Court accepted that "the functional aspect of geographical compactness takes into account the presence or absence of a sense of community made possible by open lines

---

[22] See Part IV, infra. All the proposed plans submitted [_____] and to Special Master Lacey, include a similar tri-county Hispanic district.

[23] The Referees are grateful to Nathan Lewin for his thoughtful comments on this subject, submitted for their consideration by letter dated May 29, 1992. See June 1, 1992 Report, Appendix H.

of access and communications." Wilson, 823 P.2d at 549. Members of a minority group who live in separate enclaves may be still included in a single district where it can be shown that they constitute a single community having similar interests. See, e.g. Hastert, 777 F. Supp. at 649 (Hispanic population split into two enclaves by "exogenous and institutional barriers" treated as single community for purposes of compactness).

In O'Sullivan v. Brier, 540 F. Supp. 1200, 1204 (D. Kan. 1982), a three-judge court observed that "we consider as the lodestar of our analysis the grouping together of as many major communities of common economic, social, and cultural interests as possible without breaking county lines, if the resulting district realignment would not result in unconstitutional population deviations."

The importance of preserving, within a single Congressional district, groups with such "communities of interest" has recently been confirmed in cases such as Good v. Austin, No. 91-CV-74754DT, slip op. at 6 (E. & W.D. Mich. March 23, 1992) (three-judge panel); Mellow v. Mitchell, No. 0025 M.D. 1992, Commonwealth Court of Pennsylvania, slip op. at 26-29 (findings of presiding judge); Wilson v. Eu, 823 F.2d 545, 574 (1992). See also Legislature v. Reinecke, 492 P.2d 385 (1973); Emison v. Growe, 782 F. Supp. 427, 443 (D. Minn. 1991), probable jurisdiction noted, 112 S. Ct. 1557 (1992).

In Carstens v. Lamm, 543 F. Supp. 68, 91 (D. Colo. 1982) it was assumed that "a concept of 'community of interest' can and does apply to congressional redistricting, since formulating a plan without any such

consideration would constitute a wholly arbitrary and capricious exercise." This is an important policy in New York districting. See People v. Board of Supervisors, 148 N.Y. 187, 42 N.E. 592 (1896); Petition of Richardson, 284 App. Div. 344 (2d Dep't) aff'd, 307 N.Y. 269, 121 N.E.2d 217 (1954) ("[T]he constitutionality of the apportionment cannot be determined merely by the shape of the material factors including pre-existing lines, topography, means of transportation, and pre-existing associations." (citations omitted.)

5. Political Fairness

After addressing the primary constitutional and statutory criteria, the Referees turned to the issue of political fairness. Competitiveness, although not a mandatory criterion, is nonetheless an important consideration in measuring the

voters' ability to elect accountable representatives of their choice. The proposed Referee's Final Plan provides improved competitiveness within the strict parameters imposed by meeting the mandatory redistricting criteria.

Political fairness requires that the districting process be accomplished so as not disproportionately to advantage or disadvantage one political party at the expense of another. Gafney v. Cummings, 412 U.S. 735, 753 (1973). A serious shortcoming of the proposals of both the State Senate and Assembly plans was caused by the inability of these bodies to create and agree to a congressional redistricting plan that was "politically fair."[24]

---

[24] See, e.g., "Redistricting: Albany's Duty," The New York Times, May 30, 1992, p. 18 (Editorial): "Since the Democratic Assembly and the Republican Senate could not agree on which incumbents should go, the courts stepped in."

Therefore, we gave careful consideration to this difficult partisan issue, recognizing that the current State congressional delegation was being reduced from 34 to 31 members.

The Referees' Final Plan has three districts in which the residences of incumbents co-exist in the same district.

IV. RECOMMENDED PLAN[25]

The population of New York City is unique. Its composition by race is more diverse than virtually any other city in the United States. Indeed, the 1990 Census indicates that the City is over 56% "minority," including three large racial "minority" groups: non-Hispanic black, Hispanic, and non-Hispanic Asian. Further, in working to maximize voting strength in the minority districts, a plan

---

[25] Statistical data for the Referees' Final Plan is attached to this report at Appendices E and F.

must recognize the diversity among members of the same group,[26] as well as the extent of political cohesion among the groups. Striking a balance among these groups and factors is a formidable task. However, the intense methodologies we have employed to analyze certain districts where this diversity is most apparent (Harlem, Central Brooklyn, Sunset Park, Northern Manhattan, and Northern Queens) is required in order to ensure that the voting strength of these protected groups is not diluted.

The Referees' Final Plan, is based on specific goals and rationales. As noted

---

[26] For example, the Asian communities throughout New York City include Chinese, Koreans, Japanese, and Filipinos. Similarly, the Black communities in New York City, particularly in Central Brooklyn, are comprised of Southern Blacks and Caribbean Blacks from various countries. And, the Hispanic community can first be divided between Puerto Ricans and non-Puerto Ricans, and then the latter further divided into Dominicans, other Caribbean Hispanics, South American Hispanics.

above, the various constitutional and statutory requirements were the guiding principles of this proposed plan. Accordingly, and as required under section 2 of the Voting Rights Act, once the one person, one vote requirement was satisfied, we attempted fully to guarantee the opportunity for protected minority groups to elect candidates of their choice. Moreover, because three of New York City's five counties are covered by section 5 of the Voting Rights Act, we proceeded under the principle that any plan ultimately adopted should pass muster under the "no retrogression"[1] standard as

---

[1] "Retrogression" refers to a reduction in the current level of political representation for a particular protected minority group. A voting law change is retrogressive if it has a "discriminatory effect" on the members of a protected racial or language minority group. As indicated in the following footnote, the prohibition against retrogression applies specifically to jurisdictions covered by Section 5 of the Voting Rights Act.

articulated in Beer v. United States[28] and its progeny.

Other considerations included the compactness and contiguity of the proposed districts, respecting the integrity of borough, county, and municipal boundaries, and communities of common interest that could further benefit by maintaining political ties with one another. In keeping with these rationales, special attention was paid to areas such as Central Brooklyn, [29] the possibility of

---

[28] 425 U.S. 130 (1976); See also, 28 C.F.R. § 51 et seq. A proposed voting law change will have a discriminatory effect if it will make members of a minority group worse off than they were prior to change in the voting practice or procedure in effect at the time the change was submitted. Thus, the point of comparison, or "benchmark," to determine whether the strength of minority voters will be diluted by a voting law change is generally the current political status of the minority voters in question.

[29] There are distinct African-American, Hispanic, and white traditional communities in Brooklyn. While the communities listed (Bedford Stuyvesant, Clinton Hill, Prospect Lefferts Garden, Prospect Heights) above are all African-American and Hispanic, there are other distinct communities which are predominately Italian, Jewish, and Polish. Although voter registration problems in these latter

creating an Hispanic "tri-county" district, the placement of other Hispanic cores, and maintaining Jewish cores. In Central Brooklyn, we considered the high number of non-citizen Blacks of Caribbean descent and how that community's political desires could best be effectuated. Similarly, we also weighed how the low citizenship percentages of the Dominican

---

communities are not as great as in the African-American and Hispanic communities, there is a clearly identifiable problem of voter turnout in the areas of these traditionally white communities which have been attached to predominantly minority Voting Rights districts. Just as African-Americans who are submerged in predominately white districts perceive (rightly or wrongly) that the structure and the elected leaders will not serve their interests so, too, other groups may perceive (rightly or wrongly) that their interests will not be served. The end results are decreases in voter participation which are contrary to the intent of the Voting Rights Act. Except where absolutely necessary, the boundaries of traditional communities such as Canarsie, Mill Basin, Flatbush, Midwood, Borough Park, Bensonhurst, Coney Island, and Greenpoint should be considered. Such entities should not be dismembered unless absolutely necessary. See "Statement Presented to the Special Master" by Congressman Major Owens and accompanying letter from Attorney Paul Wooten (transmitting City Council voter turnout data on file with the court) June 1, 1992 Report, Appendix N.

community in upper Manhattan[30] and the South American Hispanics in the communities of Elmhurst, East Elmhurst, Corona, and Jackson Heights in Queens, many of whom are not citizens and others who continue to be involved in "home country politics", would impact on the political cohesion of the mostly Puerto Rican -- i.e., U.S. citizen -- Hispanics.

In New York City, where the overwhelming majority of the large concentrations of racial and language minorities of New York State reside, achievement of this goal required that we carefully scrutinize several demographic and political factors. These factors included: the actual numbers of particular

---

[30] The current (1990) congressional district, to which Congressman Rangel was elected in 1990, has the lowest citizenship of any in New York City. See "Hispanics in New York: A Demographic Study," Report [_____] by Department of City Planning, Office of Immigrant Affairs and Election Analysis Division, November 1988.

"protected" groups in each county -- at both the total population and voting age population levels, registration by race, the degree of political cohesion between and among the various racial and language minority groups, citizenship status of the various minorities, voter turnout rates, and data from past city-wide as well as district-wide elections to assist us in achieving our goal.

Our starting point, as noted above, was a review and comparison of the various parties' plans. This review made clear that although the plans differed in their details, it was generally agreed that the number of minority districts should be either six or seven. Regardless of the number of minority districts created, we were concerned regarding the viability of the various minority communities'

opportunities to elect their preferred candidates.

A. Process

In order to insure compliance with the applicable laws, the plan was drafted using the following methods.

First, we divided the state into three geographic components -- New York City, Long Island, and the rest of New York State (upstate counties). We then started the plan by drafting the districts in the counties covered by section 5 of the Voting Rights Act -- New York, Kings, and Bronx. Next, we moved on to those counties with a significant minority population concentration -- Queens, Nassau, and Westchester. Then, we crafted the districts in the rest of the city. In drafting the upstate counties, we focused on honoring traditional boundaries,

compactness, political fairness and communities of interest.[31]

In order to test the strength of the proposed minority districts for effective voting equality, we directed the staff to obtain and analyze additional relevant data.[32]

---

[31] For example, in Buffalo, Rochester, and Nassau County, the minority communities were kept together. In equalizing population, we sought to avoid splitting counties, towns, and municipalities.

[32] In addition to the computer capabilities provided by the Task Force, the referees also had access to the computer system used by the New York City Districting Commission. The system was developed by LogiSys, Inc.

Based upon the Board of Elections registration list, using surname dictionaries to identify Hispanic and non-Hispanic Asians, and then census-based estimates to identify non-Hispanic blacks and whites, an estimate of registration by race for New York City was developed. This was loaded on the REAPS System. Using REAPS, the referees not only were able to see how various minority districts (and the various racial and language groups within the same district) compared at the total population and voting age population levels, but also at the estimated registered voter level. In this manner, the Referees could "compensate" those districts in which large numbers of protected minorities with low citizenship rates resided, such as Blacks of Caribbean descent in Central Harlem and Hispanics in Northern Manhattan and Central Queens. See June 1, 1992 Report, Appendix P. (Appendix G and H hereto).

In addition to the Census data on total population and total voting age population, for each proposed minority district covered by the Voting Rights Act we obtained estimated voter registration data by race for each VTD (voter tabulation district) within a proposed district. (Appendix G hereto). We also obtained and analyzed data from the 1990 census which showed the percentage of the non-citizen population in each minority district proposed in our plan. See June 1, 1992 Report, Appendix Q. (Appendix H hereto).

Finally, we analyzed New York election returns over a 4-year period to test the voting strength of the minority districts proposed in our plan[33], and political cohesion, particularly in regard

---

[33] See supra, n. 32

to protected groups within New York City. Such returns should be reviewed on a VTD or, at the very greatest, on a council district level.

A. Description of Referees' Plan

1. Minority Districts

Our plan consists of seven minority districts. Five have a VAP for one group of more than 50% (3 non-Hispanic Black and 2 Hispanic), and two have a combined non-Hispanic Black and Hispanic majority in excess of 60%. Six of these districts are entirely in New York City, and four are in a single county. See June 1, 1992 Report, Appendix O. (Appendices E and F hereto).

In five of these districts, there is a minority incumbent. The new districts have been drawn to maintain a maximum percentage of the constituents in the present districts represented by these

incumbents. For the five districts, an average of 75% of the population in the proposed districts is common to the present district. They range from 61% to 87%. (See Table 1, supra)

In formulating our minority districts, the Referees looked beyond the raw Census data to form the most effective concentration of protected groups in the various districts. Using data of the particular minority communities and neighborhoods (such as citizenship and estimated voter registration rates), we were able to "fine tune" the districts[24]. In this manner, we created districts most likely to provide the minority groups

---

[24] Counsel for Plaintiff Reid notes, that for Section 2 purposes "effective voting majority must be evaluated on the basis of the political facts of each districts which takes into account actual voter registration and turnout, geographic density, minority political cohesion, and minority communities of interest." See June 1, 1992 Report, Exhibit 3A.

within those districts with the best opportunity to elect their preferred candidate. (Appendix I) Prior configurations of the districts were honored where possible. (Appendix J includes Metes and Bounds, Appendix K includes maps of New York City and Appendix L includes maps of Area Divisions).

District 6

District 6 is entirely in Southeast Queens, including the eastern third of the Rockaways. The total population is 580,337. At the total population level, 53.33% is African-American, 16.92% is Hispanic, and 5.98% is Asian. The voting age population is 51.76% African-American, 15.98% Hispanic, and 5.86 Asian. This district contains the middle-class African-American communities of St. Albans, Cambria

Heights, and Springfield Gardens in Jamaica. This fact is borne out by the relatively high estimated registered voter rates for African-Americans, which is 60.4%; for Hispanics, that figure is 7.61%; and for Asians, it is 1.01%. In this proposed district, 75% of the population is in the current district represented by Mr. Flake.

District 10

District 10, entirely in Kings County, has a total population of 580,337. It contains the communities of East Flatbush and Crown Heights (both of which contain large numbers of non-citizen Caribbean Blacks), Brownsville, Bedford-Stuyvesant, Fort Greene, Red Hook, and Park Slope. The total population is 56.56% African-American, 19.67% Hispanic, and 2.17% Asian. The voting age population of District 10 is 55.47%

African-American, 18.53% Hispanic, and 2.34% Asian. The percentages of estimated registered voters in this district are 59.84% African-American, 14.35% Hispanic, and 0.86% Asian. In 1990, Edolphus Towns was reelected in a district containing a total African-American population of 43.87% and a total Hispanic population of 41.96%. See June 1, 1992 Report, Appendix R. In this proposed district, 77% of the population is in the current district represented by Mr. Towns. (Table I, supra).

District 11

District 11 is entirely in Kings County. It contains a total population of 580,338. Of these, 69.42% are Black, 11.55% are Hispanic, and 2.68% Asian. The voting age population is 67.83% Black, 11.09% Hispanic, and 2.87% Asian. At the estimated registered voter level, the

district is 72.54% Black, 7.35% Hispanic, and 1.15% Asian. Some of the communities located in this proposed district include Brownsville, portions of the heavily Caribbean Crown Heights and East Flatbush, and Midwood. Major Owens was reelected in 1990 in a district including an African-American total population of 82.31%. See June 1, 1992 Report, Appendix R. In this proposed district, 61% of the population is in the current district represented by Mr. Owens. See Table I supra.

District 12

This majority Hispanic tri-county district (Kings, New York, and Queens) has a total population of 580,337. Of that total, 8.69% are African-American, 57.87% are Hispanic, and 18.67% are Asian. The voting age population is 8.33% African-American, 54.33% Hispanic, and 20.24% Asian. Of the estimated registered

voters, Hispanics have an edge at 49.86%, while African-Americans are at 15.04%, Asians are at 5.31%, and non-Hispanic whites are at 29.90%. Some of the communities are the largely Hispanic sections of the Lower East Side, Williamsburg, Brownsville, East New York, Sunset Park and Northern Queens as well as the Asian communities of Chinatown, Sunset Park, and western Queens. Currently, no congressional incumbent resides within this district's boundaries.

District 15

This district is predominantly in New York County with the addition of Riker's Island. It contains a total population of 580,337. Of that number, 36.79% are African-American, 46.36% Hispanic, and 2.13% Asian. The voting age population is 37.03% African-American, 43.62% Hispanic, and 2.39% Asian. While

24.53% of the estimated registered voters are Hispanic, 51.47% are African-American, and 1.09% are Asian. Communities in this district are Washington Heights, Central Harlem, East Harlem, and the Upper West Side all located in Northern Manhattan. The relatively high Hispanic voting age population and low Hispanic estimated registered voter can be explained by the inclusion of Dominican community in Washington Heights, which has a low rate of citizenship[15]. In this proposed district, 87% of the population is in the current district represented by Mr. Rangel. (Table I, supra).

District 16

District 16 is entirely in The Bronx. Its population total is 580,337.

---

[15] Another factor that explains the high VAP of Hispanics and the relatively low Hispanic registration rate is that Riker's Island is also included in District 15.

Some of the communities in this district are Hunts Point, Morrisania, and other communities in the East and South Bronx. All have a strong minority and, in particular, Hispanic presence. The total population is 33.23% African-American, 60.17% Hispanic, and 1.65% Asian. The voting age population is 33.58% African-American, 58.71% Hispanic, and 1.79% Asian. Of the registered voters, 43.56% are African-American, 49.05% are Hispanic, and 0.55% are Asian. In this proposed district, 82% of the population of this proposed district is in the current district represented by Mr. Serrano. (Table I, supra).

District 17

District 17 is a "majority-minority" district, with a total population of 580,337. Of this number, 37.76% are African-American, 29.08% are

Hispanic, and 3.45% are Asian. The combined minority voting age population is 65.74% (36.36% African-American, 26.07% Hispanic, and 3.36% Asian). For the New York City portion only, Non-Hispanic whites in this district are 40.53% of the estimated registered voters, while 37.36% are African-American, 21.08% are Hispanic, and 1.02% are Asian. This bi-county district contains portions of Bronx and Westchester counties. However, because a non-minority incumbent is presently residing in this district -- Congressman Engel -- this district will likely be a strong "influence" district rather than one in which the combined minority population, at the present time, will elect a candidate of their choice.

2. Long Island Districts

Districts 1 and 2 are in Suffolk County. Districts 3 and 4 are in Nassau

County. District 5 includes portions of Suffolk, Nassau, and Queens Counties. (Appendix F includes county allocations, Appendix J includes Metes and Bounds, Appendix L includes Maps of Long Island, and Appendix N includes Area Divisions).

3. Upstate New York Districts

The greatest loss of population was in Western New York, and so it is there where two incumbents are in the same district. District 19 is in Westchester and Putnam counties. District 20 is in Orange, Rockland, and Sullivan counties. District 21 is in Montgomery, Albany, and Schenectady counties. District 22 is in Essex, Saratoga, Columbia, Warren, Rensselaer, Washington, and Greene counties. District 23 is in Delaware, Otsego, Oneida, Chenango, Schohar, Madison, and Herkimer counties. District 24 is in Saint Lawrence, Hamilton, Lewis,

Franklin, Jefferson, and Clinton counties. District 25 is in Cortland and Onondoga counties. District 26 is in Tioga, Broome, and Ulster counties. District 27 is in Genessee, Ontario, Wyoming, Seneca, and Livingston counties. District 28 is in Monroe County. District 29 is in Niagara and Orleans Counties. District 30 is in a portion of Erie County. District 31 is in Chatauqua, Cattaragus, Allegany, Stueben, Yates, Chemung, Schuyler, and parts of Geneva and Cayuga counties. (Appendix F includes county allocations, Appendix J includes Metes and Bounds, Appendix M includes maps of Upstate, and Appendix N includes Area Divisions).

V. DESCRIPTIONS OF PLANS PROPOSED BY THE PARTIES

Because population deviation is a relatively straightforward mathematical

process, our evaluation of the plans focused on whether they have achieved the requirement of "racial fairness" under the Voting Rights Act. Before discussing each plan in detail, we first will evaluate the plans collectively on the attainment of population equality as mandated by the Constitutional "one person, one vote" criteria.

A. Attainment of Population Equality

As explained more thoroughly above, de minimis deviations from exact population equality may be unacceptable unless the deviations are necessary to achieve some critical State objective, such as racial fairness. The Reid, Assembly and Senate plans succeed in achieving a 0.00 percent deviation from absolute equality, with the bare minimum deviation of one person. The Owens Plan

has the highest deviation percentage, 0.00005, with the maximum deviation in any district at fourteen persons. As discussed in Part III, greater deviation is permissible to ensure racial fairness. See Hastert, 777 F. Supp. at 644. Therefore, all four plans satisfy the Constitutional requirement of population equality.

B. Voting Rights Act Criteria

1. The Reid Plan

The Reid Plan divided the map of New York State into three parts -- Upstate New York, Long Island, and New York City. All counties covered by the Voting Rights Act are in New York City. See June 1, 1992 Report, Appendix A.

Within New York City, African-Americans and Latinos comprise 50.9% of the total population. The Reid Congressional Plan provides for twelve districts, all or

substantially all of which are within the City of New York. Of these twelve districts, six are designed to enable the minority community to elect candidates of their choice. The only district of these twelve that extends outside New York City does so in order to capture a substantial portion of the minority population in Nassau.

The Reid Plan contains three districts in which there are Black voting age population ("VAP") majorities. In District 5 (Southeast Queens and a portion of Nassau County), Blacks constitute 58.5 percent of the total population, 56.9 percent VAP, and 70.7 percent of the registered voter majority. District 10 (Kings) has a 56.6 percent Black population, with a 54.9 percent VAP and 60.4 percent registered voter majority. District 11 (Kings) has a total Black

population of 67.8 percent, with a 66.08 percent VAP and a 70.7 percent registered voter majority. See June 1, 1992 Report, Appendix A.

The Reid Plan also contains two majority VAP Latino districts. District 8 is a tri-county district composed of portions of Kings, New York, and Queens counties, with a heavy population concentration of Latinos. In District 8, 60.1 percent of the total population is Hispanic, with a 56.9 percent VAP and 48.7 percent registered voters majority/plurality (whites are 33% VAP). In District 16, the total population is 59.3 percent Hispanic, with a 58 percent VAP and a registered voter plurality of 47.9 percent. Id.

In addition, the Reid Plan creates one district, number 15, with a combined Black and Hispanic VAP of 76

percent and a combined minority estimated registered voter population of 76.3 percent. Currently, Congressman Rangel resides in this New York County district. Although the African-American VAP is lower than the Hispanic VAP, at the registered voter level the split is 48.1% African-American, 22.2% Hispanic, and 1.0% Asian.

The Reid Congressional Plan provides for twenty-five congressional districts in addition to the six minority districts. Like the six minority districts, these twenty-five districts are in full compliance with the "one person, one vote" requirement.

This approach -- four majority Black districts and two majority Latino districts -- is also found in the Assembly's Plan: two of the six districts have Hispanic VAP majorities, including a new district in Brooklyn with no incumbent.

Three districts have Black VAP majorities. The sixth district has a Hispanic plurality and a substantial crossover vote which would enable an African-American candidate of choice to be elected.

Similarly, the Owens Plan includes three districts with a Black VAP of 50 percent or greater, two districts with a Latino VAP of 50 percent or greater, and two districts with a combined Black and Latino VAP of 55 percent or greater. Like the Reid and Assembly plans, it retains five current minority districts and creates a potential Latino seat in Brooklyn.

2. Owens' Plan

The Owens' Plan contains thirteen (13) districts in New York City, numbered 1 through 13. See June 1, 1992 Report, Appendix B and Exhibit 5. Districts 2, 3, 6, 8, 10 and 11 are majority white districts. Only one of

these districts, District 10 in Queens, is contained wholly within a single county. Four of these districts are bi-county: District 2 (Queens/New York), District 3 (Staten Island/Kings), District 8 (New York/Bronx), and District 11 (Queens/Bronx). District 6, which cuts across the municipal boundary of New York City, is a tri-county district containing parts of Kings, Queens, and Nassau.

District 1 is a tri-county district that includes Kings, New York, and Queens counties. In Kings County, the communities included are Sunset Park, Williamsburg, Bushwick, and Cypress Hills. In Queens, the communities of Astoria, Elmhurst, and East Elmhurst are included, while in New York County, Chinatown and a part of the Lower East Side are included in District 1. The minority population is 9.12% African-American, 57.46% Latino, and

17.74% Asian. Similarly, the voting age population is 8.75% African-American,, 53.68% Latino, and 19.22% Asian. The total number of registered voters is 176,077 of whom an estimated 16% are African-American, 5% are Asian, and 47% are Latino.

District 4 is located wholly in Kings County and includes the communities of Canarsie, Brownsville, East New York, Bedford-Stuyvesant, and Park Slope. The minority population is 52.48% African-American, 19.28% Latino, and 3.15% Asian. The voting age population is 50.36% African-American, 17.80% Latino, and 3.29% Asian. The total number of registered voters is 250,708, with an estimated 55% African-American, 14% Latino, and 1% Asian.

District 5 is located wholly in Kings County and includes the communities

of Bedford-Stuyvesant, Crown Heights, East Flatbush, and Flatbush. The minority population is 72.75% African-American, 11.24% Latino, and 2.27% Asian. The voting age population is 71.24% African-American, 10.82% Latino, and 2.44% Asian. There are 179,216 registered voters, with an estimated 16% white, 76% African-American, 7% Latino, and 1% Asian.

District 7 is located wholly in Queens County and includes the communities of Jamaica, South Jamaica, and part of the Rockaways. The minority population is 53.41% African-American, 16.78% Latino, and 6.04% Asian. The voting age population is 51.74% African-American, 15.84% Latino, and 5.93% Asian. The total number of registered voters is 228,977 with an estimated 30% white, 61% African-American, 8% Latino, and 1% Asian.

District 9 is located wholly in New York county and includes the communities of East Harlem ("El Barrio"), Harlem, and part of Washington Heights. This district has a total population of 580,694, with a deviation of .06%, and is 16.77% white, 36.21% African-American, 45.34% Latino, and 2.24% Asian with VAP of 36.38% African-American, 42.34% Latino, and 2.52% Asian. There are 263,226 registered voters with an estimated 27% white, 50% African-American, 24% Latino, and 1% Asian.

District 12 is located wholly in The Bronx and includes the communities of the South Bronx, Classon Point, and West Farms. The minority population is 33.2% African-American, 60.17% Latino, 1.65% Asian. The voting age population is 33.59% African-American, 58.71% Latino, 1.79% Asian. The total number of

registered voters is 217,531, with an estimated 7% white, 44% African-Americans, 49% Latino, and 1% Asian.

District 13 is a tri-county, multi-racial "influence" district that covers Queens, Bronx, and Nassau and includes the neighborhoods of Westchester Heights, Morris Park, Westchester, Union Point, and portions of Nassau County. The total number from New York City is 32.28% African-American, 29.36% Latino, 3.72% Asian, and the corresponding voting age population is 31.03% African-American, 26.24% Latino, and 3.56% Asian. There are 194,154 total registered voters in the part of this district contained in New York City. Of this number, an estimated 42% are white, 37% are African-American, 21% are Latino, and 1% are Asian.

The Majority Coalition Plan creates five viable minority districts and

one "influence" district. In doing so, however, it has the highest percent deviation from absolute population equality.[36] While this deviation is quite small, other plans which create six minority districts (e.g., the Reid Plan and the Assembly Plan) have even smaller deviations.[37] Therefore, while the Majority Coalition Plan comes closest to achieving effective voting equality, we cannot recommend adoption of the plan for the City of New York. We do, however, consider the rationale and methodologies used to be sound[38] and adopted similar ones in creating the Referees' Final Plan.

3. Assembly Plan

---

[36] The deviation is 0.0005%.

[37] The deviation in both the Assembly and Reid plans is 0.00.

[38] The Majority Coalition relies on the methodologies proposed by Dr. Grofman in his 1982 Report to the Special Master in Flateau v. Anderson (See June 1, 1992 Report, Appendix L).

The Assembly created a total of six minority districts in New York State, which is divided into the three general areas of Upstate New York, Long Island, and New York City. Each of these six minority districts is wholly in the City of New York and five are single-county districts. Their plan also provides for one tri-county district. See June 1, 1992 Report, Appendix C.

District 6 is an African-American Queens County district. It encompasses the communities of Laurelton, Rosedale, Far Rockaway, Bayswater, Edgemere, Somerville, Jamaica, St. Albans, Cambria Heights and Springfield Gardens. Of its voting age population, 51.76% are African-American, 15.98% are Hispanic, and 5.87% are Asian. The total minority voting age population of this district is 73.61%. Turning to the level of estimated

voter registration, the African-American total is 61.2%, for Hispanics the figure is 7.5%, and 0.9% for the Asians. Over 30% of the estimated registered voters are non-Hispanic whites.

District 10 is entirely in Kings County. It includes the predominantly African-American communities of Bedford Stuyvesant, Crown Heights, Brownsville, East Flatbush, Red Hook and East New York, as well as portions of predominantly white Park Slope and all of white Canarsie. Its voting age population is 52.29% African-American, 20.13% Hispanic, and 2.43% Asian. At the estimated registered voter level, 57.1% is African-American, 15.1% is Hispanic, and 0.8% is Asian. Approximately 27% of the registered voters in this district are non-Hispanic whites.

District 11 is also predominantly African-American and also

located only in Kings County. It consists of the African-American communities of Crown Heights, East Flatbush and Brownsville, as well as portions of predominantly white Park Slope and all of white Midwood. The Assembly Plan includes 71.1% African-Americans of the voting age population in this district, 9.99% voting age Hispanics, and 2.82% voting age Asians. The total estimated percentage of registered voters for African-Americans, Hispanics, and Asians is, respectively, 76.1%, 5.9%, and 1.0%.

District 15 in the Assembly Plan consists of Central Harlem, East Harlem, West Harlem and Washington Heights. It is located wholly within New York County. Its voting age population is 36.64% African-American, 42.44% Hispanic, and 2.55% Asian. Although it may appear to be a majority Hispanic district, at the

estimated registered voter level it is 50.5% African-American and only 23.6% Hispanic and 1.0% Asian.

District 16, entirely in Bronx County, includes Tremont, Mott Haven, Hunt's Point, Melrose, Morris Heights and Morrisania. It contains 58.08% of voting age Hispanics, 36.37% voting age African-Americans, and 1.51% Asians. It is 95.96% total minority voting age population. At the estimated registered voter level, the split is African-Americans, 47.0% and Hispanics, 48.0%. Asians are 0.5% of this district's registered voters.

District 17 is a second majority Hispanic district. It is tri-county, including portions of New York County (the Lower Eastside and Chinatown), Kings County (Williamsburg, Bushwick and portions of East New York) and Queens County (Maspeth, Ridgewood, Elmhurst, and

Woodside). It has a voting age population that is 8.32% African-American, 53.69% Hispanic, and 20.49% Asian. As for the estimated registered voters, this district is 15% African-American, 48.8% Hispanic, and 5.6% Asian. Over 30% of the registered voters are non-Hispanic whites.

4. Senate Plan

The Senate Plan, as do all other submitted plans, divides the state into three sections, namely Upstate New York, New York City, and Long Island. In New York City, the Senate Plan creates seven minority districts: Districts 6, 9, 10, 12, 14, 16, and 17. Four of those districts have an African-American majority, while three have an Hispanic population majority. See June 1, 1992 Report, Appendix D.

District 6 is a single-county Queens district. The total population is

56.74% African-American, 16.29% Hispanic, and 5.64% Asian. At the voting age population level, the minority racial composition is 55.12% African-American, 15.42% Hispanic, and 5.66% Asian, for a total of 76.2%. .In this district, among the registered voters, 64.2% are African-American, 7.3% Hispanic, and 1.1% Asian.

District 9 is located entirely in Kings County, and is also majority African-American. Of the voting age population, 58.27% are African-American, 13.26% are Hispanic, and 1.95% are Asian. In this district, among the registered voters, 61.9% are African-American, 9.6% are Hispanic, and 0.7% are Asian. Over 27% of the registered voters are non-Hispanic white.

District 10 is also entirely in Kings County. At the voting age level, 59.52% of its population is African-

American, 10.31% is Hispanic, and 3.69% is Asian. The estimated registered voters show a similar pattern: 64.4% are African-American, 6.1% are Hispanic, and 1.2% are Asian. The high non-Hispanic white registered voter percentage is over 28%.

District 12 is an Hispanic majority "tri-county" district. It includes portions of the boroughs of Brooklyn, Manhattan, and Queens. The minority voting age population is 11.71% African-American, 59.15% Hispanic and 9.67% Asian. Non-Hispanic whites are approximately 30% of the estimated registered voters, while African-Americans are 18.6%, Hispanics are 49.2%, and Asians are 2.1%.

District 14 is a bi-county Bronx/Manhattan district. Of the voting age population, 20.95% is African-American, 54.91% is Hispanic, and 2.71% is

Asian. A different pattern emerges at the estimated registered voter level, however; 30.5% are African-American, 37.8% are Hispanic, and 1.1% are Asian. Over 30% of the estimated registered voters are non-Hispanic whites.

District 16 is a second tri-county district, which includes The Bronx, Manhattan, and portions of Westchester. At the voting age level, 57.72% of the population is African-American, while 18.74% is Hispanic, and 1.68% is Asian. Over 24% of the estimated registered voters are non-Hispanic whites, 61.5% are African-American, 13.4% are Hispanic, and 0.8% are Asian.

District 17 is entirely in The Bronx. Of the voting age population, 24.12% is African-American, 52.67% is Hispanic, and 3.73% is Asian. As in district 14, however, no clear majority

emerges at the estimated registered voter level: 31.3% are African-American, 43.4% are Hispanic and 0.7% are Asian. Over 24% of the registered voters are non-Hispanic white.

In his report, "Preliminary Report on Racial Block Voting and Political Mobilization in New York City as It Affects Proposed Congressional Districts," (June 1, 1992 Report, Appendix E) Professor James W. Loewen argues that in New York City, there can be no rule applied with regard to the "minimum required" total population or voting age population that will permit a minority district the opportunity to elect a candidate of choice. He then proceeds to analyze each minority district in the Senate Plan with regard to whether it is a "secure" minority district, it "leans" or is a "toss-up."

Professor Loewen's central criteria, measuring the high and low ends of political mobilization on a district-by-district basis, appears consistent with valid methodologies. However, his application relies on numerous assumptions that lack sufficient foundation. Based on his analysis, he concludes that the Senate's proposed plan would create four securely African-American districts, one securely Hispanic district, and two districts in which there would be a "toss-up" between Blacks and Hispanics.

VII. COMMENTS ON THE SPECIAL MASTER'S PLAN WITH REGARD TO THE VOTING RIGHTS ACT

A preliminary comparison of the Special Master's Plan with the Referees' Final Plan shows that both plans achieve zero deviation and have seven minority districts. There are, however, major differences between the plans. One of the most striking differences is that the

Special Master's Plan splits six of the seven minority district between two or more counties. Our plan proposes four of its seven minority districts within a single county. See June 1, 1992 Report, Appendix S.

A. Geographic Concurrence: Referees' Plan and Master's Plan

The Master's Plan, as compared to our plan, vastly changes the geography and, therefore, the constituencies of the five present minority districts in New York City.

The Geographic Concurrence Analysis summarized in the Table I below measures the extent to which existing cores are preserved by comparing the population and percent of commonality for each of the districts for both plans.

The following summarizes the analysis:

- For the constituents in each of the five present minority districts, the Referees' Final Plan displaces the least number.
- On the average, the Master's Final Plan "displaces" 58% of the constituents, while the Referees' Final Plan "displaces" only 25%.
- In the Master's Plan, four of the five districts displace more than 50% of the population, while in the Referees' Final Plan, no district displaces more than 39%.
- The total population "displaced" in the Master's Plan is 1,694,874 as compared to 729,704 in the Referees' Final Plan.

TABLE I
MINORITY DISTRICTS
GEOGRAPHIC CONCURREM

Current District #	Incumbent	Master's Plan	Referees' Plan
6	FLAKE	289,389 (50%)	435,742 (75%)
11	TOWNS	337,272 (58%)	446,608 (77%)
12	OWENS	172,263 (30%)	308,415 (61%)
16	RANGEL	174,020 (30%)	505,564 (87%)
18	SERRANO	233,867 (40%)	475,652 (82%)
		1,206,811	2,171,981
	AVERAGE CONCURRENCE	41.6%	74.8%

Turning to a comparison of these districts, the Master's equivalent of the our district 6 in southeast Queens is 55% African-American and 34% white. Our district is 52% African-American and 25% white. Based on a locally intensive analysis, the political participation and mobilization of the African-American county in southeast is such that the plan as we have drawn it is more than sufficiently African American, as well as significantly less white. Also, it remains in Queens County.

Taking Central Brooklyn as a single district, our proposal has a higher overall number of African-Americans in these districts. The Masters Plan includes 675,000 African-Americans within these districts, while this plan includes approximately 723,000 African-Americans. Concomitantly, in this double district,

the Master's Plan includes approximately 300,000 whites while we propose to include only 236,000. Of course, there is the issue of how to divide the "double district." He divides the African-Americans evenly, at 58% each, while the Referees' Final Plan has 55.47 percent non-Hispanic Black VAP in District 10 and 67.83 Black VAP in District 11.

While in our plan the Central Harlem district is in New York County with the exception of Riker's Island (and is essentially the current district), the Master's Plan shreds out Hispanics and stretches into The Bronx and Westchester. This is a major conceptual difference. Consequently, this district is 57.5% African-American and 19% Hispanic. The Referees' proposed district 15 is 37% African-American VAP and 43% Hispanic VAP: the combined totals are 80%. A local

analysis shows this to be a Black district as we have proposed it and is graphically shown with the analysis of registration by race and election data in the Appendices to our June 1, 1992 Report and herein.

One of our proposal plan's two Hispanic districts is entirely in The Bronx, while the Special Master Plan's South Bronx district includes portions of Queens and Manhattan as well. Our proposed district exceeds slightly the Special Master Plan's Hispanic VAP, 58.7% versus 58.3% respectively, while including only 5% white VAP. The Special Master's Plan would include 13% white VAP. The Hispanic registration percentage of the Special Master's Plan drops more sharply than ours, 47.4% versus 49.1% respectively, as he includes a higher percentage of non-Puerto Rican Hispanics. And the gap in the White population

registration grows between the Referees' Final Plan and the Special Master's, 6.8% versus 18.9%, respectively.

Both the Referees' Final Plan and the Special Master's Plan include a "tri-county" district. The Special Master's Plan excludes Chinatown. It is 55% Hispanic VAP, as is our plan. Our plan is 50% Hispanic voter registration, while the Master's is 48%. As to the Asian population, the Special Master's Plan is 7% VAP while we maintain three city-wide Asian cores in a single district, bringing that figure to 20%.

The Special Master draws a third Hispanic district in The Bronx and Manhattan; it is 59% Hispanic, and 40% Hispanic voter registration, including the Washington Heights Dominican community making this marginal Hispanic district less secure because of low citizenship

rates. Our plan includes a Bronx/Westchester district, which is 36% African-American VAP, 26% Hispanic VAP, and 3% Asian VAP, for a total minority VAP of 67%.

WHEREFORE, we respectfully request that this Court accept the unanimously recommended reapportionment and redistricting Plan submitted herewith.

Dated: New York, New York
June 4, 1992

/S/ Vincent A. DeIorio
VINCENT A. DeIORIO

/S/ Frank J. Macchiarola
FRANK J. MACCHIAROLA

/S/ Philip D. Roache
PHILIP D. ROACHE

Appendix K

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PUERTO RICAN LEGAL DEFENSE AND EDUCATION FUND, INC., AND EVELYN CORCHARDO, Plaintiffs, - against - DAVID GANTT, et al., Defendants.	CIVIL ACTIONS NO. 92-1521-SJ AND NO. 92-1776-SJ (CONSOLIDATED CASES)
MICHAEL T. WARING, Plaintiff, - against - DAVID GANTT, et al., Defendants.	

AFFIDAVIT OF THEODORE S. ARRINGTON, PH.D.

Theodore S. Arrington, Ph.D., first being duly sworn, deposes and says:

1. I am a citizen and resident of Mecklenburg County, North Carolina, and a judicially recognized expert in

districting, reapportionment, and racial and partisan patterns in elections.

PURPOSE

2. On 12 May 1992 a United States Three-Judge Court ("the Court") considering these consolidated cases composed of:

> Honorable George C. Pratt, Judge of the United States Court of Appeals for the Second Circuit,
>
> Honorable John S. Martin, Jr., Judge of the United States District Court for the Southern District of New York, and
>
> Honorable Sterling Johnson, Jr., Judge of the United States District Court for the Eastern District of New York,

appointed Frederick B. Lacey, Esq. as Special Master empowered and charged with the duty to prepare and recommend to the Court for adoption a redistricting plan for the State of New York, dividing the State into thirty-one congressional districts in accordance with the 1990

federal census. On 14 May 1992, Special Master Lacey retained me to aid him in drawing the districts and preparing materials to allow the Court to compare his plan with those prepared by plaintiffs, defendants, and intervenors in these cases. I have studied the Order appointing Special Master Lacey, and have prepared this affidavit in accord with the Order's instructions and the instructions I received from the Special Master.

3. The purpose of this affidavit is to inform the Court of the principles and values I used in assisting the preparation of Special Master Lacey's plan (hereinafter labeled the "Master's plan"), including a narrative describing the features of that plan and comparing it with the others that have been filed with the Court or presented to the Special Master.

4. This comparative analysis will show that the Master's plan was prepared with strict adherence to the applicable law, due regard for the public interest, and without regard to special interests. It will also show the attention the Special Master gave to assuring that the districts he has recommended were configured to provide as much as possible for the representation of communities of interest in terms of ethnicity, race, culture, and geography.

5. Specifically, the analysis will cover:

1. Comparison of the plans submitted to the Court in terms of the one person, one vote standard of the United States Constitution.

2. Comparison of the plans on the basis of compliance with the Voting Rights Act of 1965 as amended.

3. Comparison of the plans in terms of political fairness.

4. Comparison of the plans in terms of other public interest criteria including compactness, avoidance of dividing local jurisdictions, attention to traditional district alignments in the State, and communities of interest.

6. All of the analysis is based on the 1990 census (Public Law 94-171) data, voter enrollment, and election returns available from the computer system of the New York State Task Force on Demographic Research and Reapportionment.

CREDENTIALS OF THEODORE S. ARRINGTON

7. I set forth here a summary of my experience most relevant to the task of preparing a congressional redistricting plan for the State of New York. The full range of my experience is described in my

curriculum vitae, attached as Exhibit B to the Appendix in Support of the Report and Recommendations of the Special Master.

8. I am currently Professor and Chair of the Department of Political Science at the University of North Carolina at Charlotte ("UNC-Charlotte"). I received my Doctor of Philosophy degree from the University of Arizona in 1973 and joined the UNC-Charlotte faculty that year. I teach both undergraduate and graduate courses in research methodology, voting behavior, political parties, Congress, the Presidency, and other aspects of American politics. My academic specialties have led to my retention as a consultant in several lawsuits involving the creation of districts for state offices and congressional seats.

9. In the case of Gingles v. Edmisten, 590 F. Supp. 345 (E.D.N.C. 1984), I

testified as an expert witness and was so qualified by the three-judge federal court that heard that case. My testimony included the presentation of proposed districts for the North Carolina General Assembly, which were drawn under my supervision and presented to the General Assembly by members of that body. I also testified on the success that African-American candidates would have had in those districts in the 1982 at-large elections. The decision of the three-judge court in that case was affirmed by the United States Supreme Court in Thornburg v. Gingles, 478 U.S. 30 (1986).

10. I testified by affidavit as an expert witness in Kelly Alexander, Jr. v. James G. Martin, Civil Action No. 86-1048-CIV-5 (E.D.N.C. 1987). In that case I prepared testimony on the racial effects of statewide elections for Superior Court in

North Carolina. The General Assembly of North Carolina responded to that suit by enacting legislation creating judicial subdistricts for the nomination of Superior Court Judges in counties where majority African-American subdistricts were possible (see N.C. Gen. Stat. 37A-41). This legislative response was similar to the proposals I had offered in my testimony (except that I suggested election as well as nomination from these districts), and the subdistricts themselves were similar to those I drew for that testimony.

11. I am currently serving as an expert witness in Republican Party of North Carolina v. James G. Martin, Civil Action No. C-87-779-G (M.D.N.C. 1988). I have offered the opinion in that proceeding that the procedure for statewide elections of Superior Court judges dilutes

Republican votes because Republican voter majorities or near-majorities could be heard if districts were created for judicial elections and that the procedure therefore has the effect of consistently degrading the votes of Republican voters and their influence on the political process as a whole.

12. In the combined cases of Burton v. Sheheen, Civil Action No. 3-91-2983-1, South Carolina Reapportionment Advisory Committee v. Campbell, Civil Action No. 3-91-3310-1, and Blanton v. Sheheen, Civil Action No. 2-91-3635-1 (D.S.C. Columbia Div. 1992), the three-judge federal court declared that a deadlock existed in the redistricting system in South Carolina and proceeded to draw districts for the General Assembly and Congress for that State. I was an expert witness for the plaintiffs in one of those cases and

testified about the racial effects of various proposed districting plans.

13. In Jones v. Miller, Civil Action No. 1-92-CV-330-JOF (N.D. Ga. Atlanta Div. 1992) I was retained as an expert witness for plaintiffs opposing the districts drawn by the General Assembly for Congress and the General Assembly in Georgia. The General Assembly redrew the districts to comply with the requirements of the United States Department of Justice in April 1992. The Justice Department then precleared the plans under section 5 of the Voting Rights Act, and the suit was dropped.

14. In Florida I have been participating in combined cases challenging the districting plans for the State Legislature and testified by affidavit and in court before the Special Master who was appointed by the three-judge federal court

there to draft a congressional plan. These cases are DeGrandy v. Wetherell, Civil Action No. 92-40015-WS and Florida State Conference of NAACP Branches v. Chiles, Civil Action No. 92-40131-WS (N.D. Fla.).

15. I have been retained by plaintiffs in the case of Mackinnon v. Government of Prince Edward Island, pending before the Supreme Court of Prince Edward Island, Canada. In that case I have prepared for the provincial legislature a redistricting proposal that follows one person, one vote standards. I will testify that such districting is practical and necessary under the Canadian Charter of Rights and Freedoms.

16. In addition to my work as a consultant in litigation, I have served in an advisory capacity for a number of local governmental bodies to advise them on

election systems, drawing districts, or reapportionment of existing districts, where these units have faced a need to bring their election systems into compliance with the Voting Rights Act and the United States Constitution.

17. I have edited one book and co-authored two monographs, published over twenty-five articles, and delivered numerous papers in the last twenty years. Most of these works concern the effects of party and race on voting behavior. Included in my research are several published studies of campaign finance. All of this work also examined racial and partisan variables in single member and multi-seat elections. My continuing research is focused on the effects of party and race on voting.

18. I have also been retained by candidates and campaign managers for

local, state, and national office for advice on campaign techniques and procedures. I have conducted training seminars and workshops on campaigning, and have commented in the electronic and print media as an expert on elections.

19. I am a referee for The American Political Science Review, The Journal of Politics, and The American Journal of Political Science, among others. I also read textbooks in my field for commercial publishers, helping them judge the quality of research on general politics, partisan and racial voting patterns, and the nature of multi-seat and single member district election systems.

20. The guiding principles in the preparation of the Master's plan, in their order of priority were:

1. One person, one vote equality, expressed as zero deviation

between districts made up of contiguous territory.

2. Compliance with the Voting Rights Act, expressed by creating control districts for racial and language minorities wherever possible and minority influence districts for the minority citizens who cannot be placed in a control district or are not needed to constitute sufficient minority population for a control district.

3. Partisan fairness, expressed by creating districts with about the same partisan balance as the state in general with a number of two-party or marginal districts if possible.

4. The drawing of districts that reflect a community of interest

and are easy to understand, administer, and campaign in. This principle is expressed by attempting to draw districts following several principles, no one of which is given priority, but which are applied using balance and judgment:

* Compactness;
* Avoidance of crossing county, municipal, town, and village lines;
* Grouping people with similar interests, culture, geography, or history where possible.

21. The districting philosophy I employed to assist the Special Master's compliance with the Constitution and the Voting Rights Act in his preparation of a plan for congressional districts in New York

draws on my familiarity with relevant academic and other literature, including materials on the history, geography and politics of New York; my previous redistricting experience; my review of the 1970 and 1980 Congressional Districting plans for New York; my review of the plans and supporting materials submitted by the parties; my consideration of the testimony and remarks received by the Special Master at the meeting he conducted on May 18, 1992; technical assistance from James Ford, a candidate for a Masters degree in Public Administration at Columbia University, and from the Task Force staff; and my consultation with Dr. Esther Fuchs, Assistant Professor of Political Science at Barnard College and Columbia University.

ONE PERSON, ONE VOTE ANALYSIS OF PROPOSED DISTRICTS

22. The Special Master directed me to assist with the preparation of a "zero deviation" congressional redistricting plan for the State of New York. Deviation is defined as the difference between the largest and smallest districts expressed as a percentage of the ideal district size (population of the state divided by the number of congressional districts it is allocated). The population of New York State, based on the 1990 census, is 17,990,455. The number of congressional districts allocated to New York State after the 1990 census is 31. The ideal district size, therefore, is 580,337 people. The deviation for the Master's plan is two people. The smallest district is 580,336 people and the largest is 580,338 people. Mathematically, this is

.0000034 percent total deviation, a zero deviation to five decimal places. An examination of Exhibit 1, attached to this affidavit, compares the deviation percentages of the Master's plan with the others submitted to the Court. As is clear, the Master's plan matches those plans with zero deviation and, of course, in this respect is better than those that did not achieve zero deviation.

23. A zero deviation is sometimes achieved at some cost to other values. For example, it may become necessary to create oddly shaped boundaries somewhere along the perimeter of the district.

24. In the Master's plan, such a boundary is usually confined to only one town within one county for each district outside New York City. Outside the City, the districts were constructed using whole towns as the building blocks and then

selecting a single town on the border of each district for "fine tuning" to achieve population equality among the districts. Individual blocks were selected within each of those border towns and assigned to one district or another until exact numerical equality was achieved. The results of these decisions are reflected in Exhibit 15 and discussed in paragraphs 97 to 149 infra.

25. Within New York City, the districts were constructed using Voter Tabulation Districts ("VTDs"),.which are either precincts or small groupings of precincts (some New York City precincts are very small). These districts were then refined by adding or subtracting at the block level to increase minority concentrations and to achieve zero deviation.

COMPLIANCE WITH THE VOTING RIGHTS ACT

26. According to well-established social science findings, the social and economic position of African-American citizens and language minorities in New York, particularly those in New York City and surrounding counties, disadvantages them politically. They have had inferior opportunities to participate in the political process as a whole and to elect candidates of their choice. It also appears that, compared to other citizens, they have lower rates of voter registration and voter turnout, and are less likely to run for office or otherwise participate actively in the political process. When the effects of racially polarized voting are added to these factors, African-Americans, Hispanics, and Asians are confronted with an enormous barrier to equal participation and ability

to elect candidates of their choice. The political position of racial and language minorities in New York is similar to that of African-Americans in North Carolina, as described by the district court in Gingles, v. Edmisten, 590 F. Supp. 345 (E.D.N.C. 1984).

27. Appropriate districting may be used to move toward equality of opportunity for African-Americans, Hispanics, and Asians to participate in the political process and to elect candidates of their choice. Two rules govern the drawing of districts designed to achieve these goals.

28. The first rule is that districts should not dilute concentrations of minority voting strength. If this rule is not followed, minority voters have no meaningful political choice beyond choosing among non-Hispanic White candidates. Where a single concentration

of minority citizens is large enough to form a single district with an appropriate majority of African-Americans or Hispanics, there is no question that a minority district should be drawn. The critical question is the extent to which it is appropriate to sacrifice compactness by combining separate concentrations of minority voters in a single district. The Special Master and I agree that such combinations are required under the Voting Rights Act and appropriate to maximize representation.

29. The second rule is that it is important to avoid packing districts with more African-American or Hispanic voters than are necessary to give them an opportunity to elect candidates of their choice. Such packing reduces the minority vote and therefore the influence of minority voters in surrounding districts.

30. I am aware that there are some who contend that the U.S. Supreme Court originally required a standard of 65 percent minority population and 60 percent voting age population ("VAP") within a single district to provide a reasonable opportunity to exercise political control over that district. See United Jewish Organizations, Inc. v. Carey, 430 U.S. 144 (1977). These "super-majority districts" were understood to compensate for the lower voting age population percentages, lower voter registration, and lower voter turnout found in minority communities.

31. Experts have come to modify this rule in practice, as indicated in Brace, Grofman, Handley, and Niemi, "Minority Voting Equality: The 65 percent Rule in Theory and Practice," 10 Law and Policy 43 (1988). Because minority communities today may be better organized and minority

citizens more likely to register and vote than was true in an earlier era, it is not always necessary to have a 60 percent African-American VAP district to assure African-Americans the opportunity to elect candidates of their choice. While a 60 percent African-American VAP may be a goal, in practice, a 55-60 percent African-American VAP is often enough for African-American citizens to have an opportunity to participate in the political process and elect candidates of their choice. Higher percentages may in fact dilute minority opportunities, and one should look carefully at any district with more than 65 percent African-American VAP because such a district might be packed. The jurisdiction-specific analysis in paragraphs 72 to 75 below applies these principles to the African-

American districts proposed by the Special Master.

32. The situation with regard to Hispanics is more complex. The Hispanic population is diverse ethnically and racially, and it sometimes lacks the degree of cohesion that is present in the African-American population. Therefore, it is wise to keep the percentage of Hispanic voting age population in a district relatively high. In general, a district with an Hispanic VAP of less than 55 percent may not assure control of the district. Again, the jurisdiction-specific analysis has been applied to the Hispanic districts in the Master's plan. See ¶¶ 76-78 infra.

33. The current practice is to perform a jurisdiction-specific analysis to determine the appropriate concentration of minorities necessary to assure control

over a district. However, any district with less than 50 percent minority VAP is inappropriate for a "minority control district." It is important that minority control districts be constructed so that the protected racial or language minority can elect a candidate of its choice, and not just a minority candidate who can appeal to non-Hispanic White voters. By definition, such control can never be assured if non-Hispanic Whites constitute a majority of the eligible voters in the district. More than a majority may be required.

34. The higher the proportion of minority voters in a district, the greater the "influence." At some point, "influence" becomes control, as indicated above. In the range below control, the relationship between the minority voting age population percentage of the district and the degree

of minority influence is curvilinear. As the minority percentage in the district climbs from 0 percent, the degree of influence is very slight. But the influence gradually builds in an upward curving fashion. At about the level of 30 percent, influence begins increasing rapidly with every 1 percent increase in minority VAP. This curve of influence changes most rapidly as the minority population becomes large enough to have the potential to nominate a minority candidate for one of the major parties. This kind of curve is common in many political situations. For example, it is the truncated bottom half of the "S" curve that describes the typical relationship between seats and votes for political parties in single member election systems.

35. If we wish to increase minority participation in the election process, we

would first strive to increase the number of minority control districts. Beyond that, the curvilinear relationship of influence to minority VAP percentage suggests that the rest of the minority population should also be concentrated. Rather than fracturing the remaining minority voters and splitting then into many districts, we should form as many districts as possible with minority populations of at least 55 percent minority VAP. Then we should try to draw as many districts as possible with close to 55 percent minority VAPs. The majority/minority competition that often appears in districts that are "balanced" (i.e., 45-55 percent minority VAP) sometimes increases minority interest and participation in the election process in those areas. This philosophy of districting would provide for minority

citizens -- as much as possible -- equality of participation in the political process taken as a whole and the ability to elect candidates of their choice.

36. Another consideration is how different minority groups should be combined in a multi-ethnic area like New York City. Puerto Ricans may have very different concerns and interests than Hispanics from Central or South American countries. There may be disputes and inter-ethnic conflict between these groups. This would suggest that community of interest principles should lead to the formation, if possible, of a Puerto Rican district distinct from a district dominated by Dominicans, Colombians, and other Central and South Americans.

37. We also should consider how African-Americans, Hispanics, and non-Hispanic Whites should be combined in districts

intended to represent minority interests. On the one hand, non-Hispanic Whites are often more likely than either African-Americans or Hispanics to register and vote. Thus a minority of non-Hispanic Whites in an African-American district would pose a greater threat to African-American control of that district than would a similar concentration of Hispanics. Similarly, a minority of African-Americans would pose a lesser threat to Hispanic control of a district than would a similar minority of non-Hispanic Whites. This is consistent with the remarks made by Hispanic group representatives at the May 18 hearing held by the Special Master.

38. On the other hand, the overall influence of minorities on the election process is diminished if districts are constructed in such a way that every

minority district is nearly 100 percent minority. This is a form of packing. It reduces the total number of minority control and influence districts that could be constructed and forces minority groups to compete with each other for the political influence remaining after non-Hispanic Whites take most of the seats.

39. Of all the plans available to the Court, the Master's plan is best in creating districts that provide African-Americans, Hispanics, and Asians the opportunity to affect the political process as a whole and elect candidates of their choice. This was achieved by combining concentrations of minority citizens outside New York City and its suburbs.

40. Exhibit 2 shows a comparison of the plans presented to the Court in terms of the percentage of the voting age

population that is African-American and Hispanic in each New York City district that could be a minority influence or control district. Although various plans (including the Master's plan) attempt to unify concentrations of Asians, the Asian population is not large enough anywhere in the City to form a significant proportion of a district. Moreover, because of the different nationalities of Asians, they have no real community of interest and might not vote together. For districting purposes, there are no significant concentrations of minority citizens significant enough to consider in districting outside New York City and its suburbs.

41. The Master's plan creates seven minority districts. From the data in Exhibit 2 and the jurisdiction-specific analysis (see ¶¶ 72-75 infra), I conclude

that all four African-American districts (CD 5, CD 7, CD 8, and CD 15) provide a significant opportunity for African-American voters to elect candidates of their choice. CD 10 and CD 16 in the Master's plan provide Hispanics an opportunity to elect candidates of their choice. An Hispanic candidate might also win in CD 14, and in any case it is a very strong influence district.

42. All seven of the Special Master's minority districts exceed the usual standard for a control district of 55 percent minority VAP. None of the Hispanic districts meet the higher super-majority standard which is sometimes cited, where no jurisdiction-specific analysis has been done, as necessary for Hispanic control of a district. For purposes of the ensuing discussion, I have labelled as "influence" districts those

with minority VAPs between 30 and 55 percent, and as "control" districts those with minority VAPs over 55 percent, although the extent to which minority control exists at this level is determined empirically by a jurisdiction-specific analysis.

43. The distribution of African-Americans, Hispanics, and non-Hispanic Whites within each of the Special Master's districts is important. The Special Master's minority districts were drawn to place some non-Hispanic Whites and some Hispanics in each majority African-American district, and to place some non-Hispanic Whites and some African-Americans in each Hispanic district. This compromise avoids creating districts packed with different minorities and increasing the conflict between them, and also avoids concentrating non-Hispanic

Whites so as to threaten African-American or Hispanic control. For this same reason, the Master's plan places the only major concentration of Asians in a non-Hispanic White district.

44. CD 7 in the Master's plan is the strongest African-American district. It has nearly 58 percent African-American VAP and only a 24 percent non-Hispanic White concentration, in Brooklyn and Queens. The testimony before the Special Master on May 18 indicated that the Queens County African-American community is highly organized politically. However, there are some African-American communities in this district (i.e., Flatbush and East New York) that are less organized. Therefore, the Master's plan places a somewhat larger concentration of African-Americans in this district than in its other African-American districts.

45. A similar concentration of African-Americans is found in the Special Master's CD 15, which consists of Harlem, parts of the Bronx, and the African-American portions of Westchester County. This district has only a 21 percent non-Hispanic White VAP. African-Americans in Harlem have been represented by an African-American Congressman for decades, and the African-Americans in Westchester County are also organized politically.

46. CD 8 in the Master's plan is situated entirely in Brooklyn, and includes virtually the entire Bedford Stuyvesant community. This is an identifiable African-American community with a history of electing African-Americans to office. Although the non-Hispanic White population of this area is 29.51 percent, the African-American or Hispanic VAPs could not be increased in that area without

weakening the potential for increased minority voting opportunities in other districts.

47. CD 5 in the Master's plan is located in Queens and Nassau counties. While the non-Hispanic White portion of the voting age population of that district is 33.75 percent, African-American voters in that district are likely to elect candidates of choice for two reasons. First, according to testimony before the Special Master (and the analysis presented below), the African-American citizens in Queens are highly mobilized. Second, it appears that in New York City, heavily minority districts are noncompetitive at the general election level.

48. The voting age population data in Exhibit 2 is supplemented with some estimates of enrollment within the Democratic Party for the Hispanic

population. These data were compiled by the New York City Redistricting Commission ("NYCRC") using some new and largely untested methods involving the counting of Hispanic surnames. This procedure yields both false positives and false negatives, is a general estimate at best, and may not be reliable at all for some kinds of Hispanic populations in a multi-ethnic city like New York. The NYCRC also had a procedure for determining the proportion of voters who are African-American, but the algorithm yields no information beyond what can be seen in Exhibit 2. Moreover, these estimates of African-American registration were never provided to the New York State Task Force and therefore were not available for all the plans submitted to the Court. The general direction of the estimates for Hispanic

registration seem plausible, but I do not place strong reliance on them.

49. The Master's plan has three Hispanic districts. CD 14 has almost 60 percent Hispanic VAP. It includes northern Manhattan and the Bronx and contains a high proportion of immigrants. The NYCRC estimated registration rate for these Hispanics is quite low. The Master's plan specifically concentrates more Hispanics in this district to make up for an assumed low rate of citizenship in the area. The African-American communities in this area of the City are also unmobilized politically (especially in Bronx County), and should not threaten Hispanic control even in the face of low enrollment. The non-Hispanic White population in this district is only 14 percent and should not pose significant competition for Hispanics.

50. The Master's plan creates an Hispanic district with a greater concentration of Puerto Ricans in CD 16. The Hispanic VAP approaches 60 percent, and the district contains a relatively even mix of both African-Americans and non-Hispanic Whites to minimize competition with the Hispanic majority.

51. CD 10 in the Master's plan combines a variety of Hispanic groups residing in the community of Jamaica in Queens, and in parts of Manhattan to Brooklyn. This district is 55 percent Hispanic and, according to NYCRC data, has a 42 percent enrollment rate. The African-American and non-Hispanic White populations in this district are balanced at less than 20 percent each. The remainder of the voting age population is Asian, American Indian, and others.

52. Exhibit 2 is arranged to facilitate comparison of the minority districts in the Master's plan with those in other plans.

53. The plans submitted by the Puerto Rican Legal Defense and Education Fund ("PRLDEF"), the Majority Coalition for Fair Reapportionment ("MCFR"), New York City Latino Voting Rights Committee ("NYCLVR"), African-American Legal Defense and Education Fund ("AALDEF"), and the American Civil Liberties Union ("ACLU") are partial plans. The Special Master reviewed their plans, but it is difficult to determine whether these partial plans can be incorporated into full 31-district, zero deviation plans. It is difficult to determine the impact a particular two-district configuration for Hispanics may have on the configuration of African-American districts.

54. The Assembly Majority created African-American super-majority district (CD 11) with a 71 percent African-American VAP. This decision inevitably meant that the other African-American districts in the Assembly could not be as strong as those drawn by the Special Master. The Assembly Majority plan's Hispanic districts are also somewhat weaker than those of the Special Master. If the Assembly Majority's Hispanic districts are evaluated on the basis of the estimates of Hispanic enrollment, it appears that the Assembly Majority plan concentrated Hispanic voting power in two districts and left Hispanics in the third district vulnerable to dominance by African-Americans.

55. MCFR seems to have followed a pattern similar to the Assembly Majority in its districting, constructing one super-

majority African-American district at the expense of creating weaker districts elsewhere. David Wells' districts possess the same minority voting power as those of the Assembly Majority, but this may be coincidental, as Mr. Wells followed a rule of compactness as his first priority.

56. The Senate Majority plan creates districts similar to the Special Master's. While the Senate plan has certain districts with African-American VAP percentages slightly higher than those in the Special Master's plan, those small increments are offset by lower VAP percentages in the Hispanic districts compared to the Master's plan. The Special Master preferred strengthening Hispanic districts because the political mobilization of Hispanics is weaker than that of African-Americans.

57. The Assembly Minority's and the Congressional Democrats' plans are similar insofar as they create an African-American super-majority district with less African-American concentration than the Assembly Majority plan. This approach increases their VAP percentages, but these districts nevertheless are weaker than those in the Master's plan.

58. The various partial plans have not created minority districts that are significantly stronger than those in the Master's plan in terms of VAP percentages or estimated registration, even though those groups were not constrained by drawing a full 31-district plan.

59. The data in Exhibit 2 demonstrate that, as expressed by VAP percentages and estimates of enrollment, the Special Master's minority district arrangement is the best of those presented to the Court.

This conclusion may be supplemented by an analysis of data on voter turnout, minority cohesion and non-Hispanic White crossover voting. This analysis will demonstrate whether it is necessary to create a super-majority district, or whether this constitutes packing.

JURISDICTION-SPECIFIC ANALYSIS OF AFRICAN-AMERICAN AND HISPANIC DISTRICTS

60. Jurisdiction-specific analysis is based on voter turnout, minority voter cohesion, and non-Hispanic White crossover voting derived from ecological regression analyses.

61. Ecological regression analysis involves examination of recent elections. The analysis is based on two kinds of data obtained from official statistics, maintained by public officials, and available on the computer system of the

New York Legislative Task Force on Demographic Research and Reapportionment. The first set of data is voting age population data by precinct, showing the number of non-Hispanic Whites, African-Americans, and Hispanics who are 18 years of age or older. The second set is election return data showing the number of votes received by each candidate.

62. The accepted method to test for racial bloc voting and to estimate turnout by race is the "two equation" method of ecological regression. To compute the ecological regression estimates with these New York data, the dependent variable in the regression equations is the vote for each candidate as a percentage of total voting age population in a precinct. The independent variable is African-American or Hispanic voting age population as a percentage of total voting age population

in that precinct. The statistical basis for this kind of analysis is discussed by Laura Irwin Langbein and Allan J. Lichtman in their monograph, Ecological Inference, Sage Series in Quantitative Applications in the Social Sciences #10, Beverly Hills: Sage Publications, 1978. A detailed description and justification of these methods can be found in James W. Loewen and Bernard Grofman, "Recent Developments in Methods Used in Vote Dilution Litigation," The Urban Lawyer (Vol. 21, No. 3, Summer 1989, pp. 589-604). A lengthy discussion can also be found in Bernard Grofman and Allan J. Lichtman, Evaluation Review: A Journal of Applied Social Research (Vol. 15, No. 6, Dec. 1991). This method was accepted by the Supreme Court in Thornburgh v. Gingles, except that registration by race was used

instead of voting age population percentages.

63. To estimate African-American cohesion and non-Hispanic White crossover voting, data from the 1989 New York City mayoral primary, 1989 mayoral runoff, and the 1988 presidential primary were used. Mayor Dinkins was the African-American mayoral candidate, and Jesse Jackson was a candidate in the presidential primary. Unfortunately, these were the only mixed race election contests in the Task Force data set. The only election in their data set with an Hispanic candidate was the Mendez/Stein contest for City Council President. The Mendez candidacy was not supported and is purportedly not a good test of a high profile Hispanic candidacy in a district with a large Hispanic majority. In order to get some general estimate for turnout, the two mayoral

elections and also the 1986 gubernatorial, 1988 U.S. Senate, and 1990 gubernatorial general elections were examined. Ecological regression estimates were run for New York City as a whole and separately for each of the 30 percent or more VAP minority districts in all of the plans. These data are summarized in Exhibit 3 (cross race voting) and Exhibit 4 (turnout estimates).

64. These data are not ideal for examining cross race voting in these districts for congressional elections. The Dinkins mayoral election and the Jackson primary were very high profile races in which the African-American population was highly organized. Hispanics, on the other hand, were not strongly attracted to Dinkins or Jackson. The figures in Exhibit 3 would indicate that Hispanics were not polarized for or

against these two prominent African-American candidates; they acted as swing voters. The low correlations between the Hispanic VAP variable and the vote would indicate that some of the ecological regression estimates of the Hispanic vote are unreliable. These regression estimates are reliable, however, for estimating the African-American and non-Hispanic White voting patterns, because the correlations between race and vote are strong, consistent, and highly significant.

65. In this analysis two sets of ecological regressions were computed. One involved the dichotomy between African-Americans and all others including non-Hispanic Whites and Hispanics. The second involved the dichotomy between Hispanics and all others, including non-Hispanic Whites and African Americans. Thus the

"White" vote in Exhibit 3 includes Hispanics. The correlations between Hispanics and all others is not strong because the "others" include African-Americans and non-Hispanic whites.

66. Jackson and Dinkins generally received 80 to 100 percent of the African-American vote in these elections. The "White" vote for them was generally less than 50 percent, and sometimes much lower than that. Since the Hispanic VAP variable does not correlate significantly with the vote for these candidates, it can be inferred that it is the non-Hispanic White voters who voted systematically for the White candidates in these elections.

67. It is thus clear that African-American voters can be strongly organized and can vote cohesively for African-American candidates. In all four of the African-American districts created by the

Master's plan, the African-American citizens cast more than 90 percent of their votes for Dinkins and Jackson. Hispanic voters were not polarized against these high profile African-American candidacies. The vote is similarly high in the African-American districts created in the other plans. There is slight evidence of any difference in the cohesion of the African-American community from one district to another.

68. The set of elections used to estimate cohesion and crossover voting is not ideal for estimating turnout for congressional elections either. As indicated above, the general election will not be the critical election for Congress in these districts, because the primary election will be the deciding event. Turnout in presidential primaries and in the mayoral primary may

not be the same as turnout in the early September primary for Congress.

69. From the data in Exhibit 4 it can be seen that the actual vote, even for these high profile offices, is a fraction of the voting age population of any of these racial and language minority groups. African-American voter rollon (the percentage of the voting age population actually casting votes in a particular election) is often higher than non-Hispanic White rollon. Hispanic rollon is usually lower than either African-American or non-Hispanic White rollon. Because the correlation between rollon and the Hispanic concentration in a precinct is often very low, some of the turnout estimates for Hispanics are not reliable. From the figures in Exhibit 4 that are reliable, however, one can observe that Hispanic rollon is sometimes only slightly

below that of non-Hispanic Whites and African-Americans. This suggests that Hispanic voters can be mobilized in numbers equivalent to non-Hispanic whites.

70. The jurisdiction-specific analysis here is confined to the seven minority districts in the Master's plan, although the relevant data for other plans are set forth in Exhibits 2, 3 and 4. Based on a study of the districts and the Exhibits, it is my opinion that the Master's plan is more likely than other plans to provide African-Americans and Hispanics with an equal opportunity to elect candidates of their choice.

71. If the analysis is limited to whether one particular district will elect a minority Member of Congress, then it is true that an African-American Member is most likely to be elected in the super-majority district proposed in some of the

plans. But the super-majority district should not be viewed in isolation from other districts in the plans. If the Special Master's districts can be won by minorities, then the super-majority district is unnecessary and constitutes packing.

72. CD 7 in the Master's plan has twice as many African-Americans as non-Hispanic Whites of voting age. It has four times as many African-Americans as Hispanics. Exhibit 3 shows that African-Americans in CD 7 are strongly cohesive in their voting for Dinkins and Jackson. Exhibit 4 shows that the turnout of African-Americans in this district is as great or greater than that of either Hispanics or non-Hispanic Whites. Thus CD 7 would appear to offer a real opportunity for secure African-American control.

73. The Master's plan CD 15 is a secure African-American district. The district has fewer non-Hispanic Whites than Hispanics (whose rollon percentages are typically less than those of non-Hispanic Whites).

74. CD 8 in the Master's plan is strongly African-American in orientation. Other than in a worst case scenario, the non-Hispanic White rollon will not be much greater than the African-American rollon, as indicated by Exhibit 4.

75. The last African-American dominant district in the Master's plan is CD 5. African-American Democrats in this district outnumber non-Hispanic White Democrats by at least three to one. Many of the non-Hispanic whites are Republicans and cannot vote in the Democratic primary. Because the Republican presence is insufficient to threaten Democratic

control of the district in a general election, this district may be considered a secure African-American district.

76. CD 14 in the Master's plan is the Hispanic district with the greatest percentage Hispanic VAP. The polarization of non-Hispanic Whites and African-Americans, as shown in Exhibit 3, makes the Hispanic dominance of the district secure. Exhibit 2 indicates that there are nearly three times as many Hispanics as African-Americans in CD 14.

77. The strongest Hispanic district in the Master's plan is CD 16, with 58 percent Hispanic VAP and nearly a majority of the Democratic enrollment, according to the Hispanic surname estimation procedure of the NYCDC. Exhibit 4 indicates that Hispanic rollon is consistently between half to two-thirds the African-American rollon.

78. The Master's plan CD 10 is secure because the non-Hispanic White and African-American population is closely balanced. Exhibit 4 indicates that Hispanic rollon is close to the level of non-Hispanic Whites in this district and lags behind African-American rollon by only a few percentage points. Even if one assumes massive differences between Hispanic and non-Hispanic rollon, Hispanic control of CD 10 is likely.

POLITICAL FAIRNESS

79. I have compared the Master's plan to the other plans for "political fairness." This refers to the way in which the redistricting plans treat the political parties.

80. There are two considerations at issue. First, does the plan treat each party the same way in terms of the translation of votes into seats? Does the

distribution of partisan voters in the plan have the effect of skewing the districts to favor one party or the other?

81. The second consideration is the kind of data that should be used to evaluate the districts. The use of congressional elections to evaluate congressional districts might seem obvious, but it is often the wrong choice. The power of incumbency is so immense in congressional elections that the vote for Congress in a district is rarely a good indicator of underlying partisanship unless the seat is "open." The challenging party in a congressional district may not be able to recruit a viable candidate, and he or she would be disadvantaged from the start by the resources available to incumbent members of Congress.

82. Voter registration is also an imperfect measure of the level of

underlying partisanship in a district. For example, Republican registration in New York (as elsewhere) lags behind Republican voting.

83. One way of determining underlying partisanship is to use a variety of statewide elections held over a period of years to form an index. This combination approach is intended to allow the varying effects of personality, incumbency, and issues to cancel out over some period of years, providing an overall measure of partisanship. This approach is the most appropriate for New York State, although no single combination of offices and years seems to be ideal. For legislative offices (Congress, State Assembly, and State Senate) there have been some unopposed seats in each election, and there is no sound way to allocate the vote in unopposed elections.

84. A summary of the measures of underlying distribution of partisan votes in the districts in certain of the proposed plans is given in Exhibits 5 to 11 attached to this affidavit. Exhibits 5, 6 and 7 show three partisanship indices for each district in each plan based on statewide election results for President in 1988, Governor in 1986 and 1990, and United States Senator in 1988. These were the elections coded into the New York State Task Force data set which seemed to reflect a variety of partisan situations. The advantage of using these elections is that there were no unopposed elections, and the same complex of issues and candidates applied to all of the districts throughout the State.

85. There are three indices based on these statewide offices given in Exhibits 5, 6 and 7. The first is labeled "low

Republican." (Exhibit 6). This is the lowest vote for any of the Republican candidates for the offices listed above in each precinct. These lowest votes are then aggregated into district figures and presented as a percentage. The second (Exhibit 5) is labelled "high Republican" and represents the highest votes for any of the Republican candidates for these offices. Again, the vote has been aggregated into district figures. The third index (Exhibit 7) is simply the mean of the other two. Where one of the minor parties endorsed a major party nominee, the votes for that individual cast under the minor party label are combined with his or her votes cast under the major party label. This yields a range of scores for each district reflecting the partisan variation that is possible in each district.

86. It is possible that the aggregate of these elections for these years is not a good indicator of the level of overall partisanship of the State. However, the index is useful to compare the districts presented in one plan with those presented in another. If the districts presented in any plan aggregate partisan voters throughout the State in a way that favors one of the major parties, that fact would be revealed by the comparisons in these indices.

87. The line charts on Exhibits 5, 6 and 7 show that the various plans, including the Special Master's, are indistinguishable in terms of partisanship on the statewide indices. Each chart shows the districts in each plan rank-ordered from the most Republican district (at the left hand side of the chart) to the least Republican. The lines tracing

the partisanship in the 31 districts in the plans are approximately the same in all three tables. In other words, partisanship in drawing these plans does not seem to be evident in terms of the distribution of partisan voters across the districts.

88. Data on party registration in the 31 districts in the Assembly and Senate Majorities, Assembly Minority, and Master's plans is given in Exhibit 8. A chart is presented at the bottom of the Exhibit showing how the three plans compare. The plans cannot be distinguished meaningfully from each other on the chart.

89. Exhibits 9, 10 and 11 show data for the high, low and mean Republican vote for Congress in 1990, 1988 and 1986 aggregated as described above. Although the congressional election data are flawed by

the problem of uncontested seats, the three charts on the Exhibits show that the plans (including the Special Master's) are very similar in terms of the distribution of partisan voters.

90. Individual candidates are often more important than partisanship. This is especially true given the power of incumbency, which is an aspect of fairness not covered in Exhibits 5 to 11.

91. Exhibit 12 shows the incumbent pairings in the proposed plans, and Exhibit 13 presents the estimated underlying partisanship of these districts. The Assembly Majority plan and the Master's plan are balanced because they cause an equal number of Republican and Democratic incumbents to face each other in single districts. Exhibit 13, however, shows that the Assembly Majority plan places Republican and Democratic

incumbents together in districts that are strongly Democratic and thus is not as fair as it otherwise might appear. The two districts in which the Master's plan place Democratic and Republic incumbents together (Districts 28 and 30) are more evenly balanced between the parties. The Senate plan places five incumbent Democrats together and forces no Republican incumbents to run against other incumbents.

OTHER CONSIDERATIONS OF DISTRICTING

92. Creating compact districts is a goal in redistricting because it enhances communication between candidates (and elected officials) and voters, and among voters within the district. There are two basic ways of judging compactness: the simple "eyeball" approach, and by mathematical formula. One can supplement the eyeball approach with an imperfect but

useful measure of whether one set of districts is more or less compact than another using the information available on the Task Force computer: total perimeter kilometers. Because all of the plans that propose 31 districts divide up the same area (New York State), and because they all divide it into 31 districts, it follows that the total perimeter length for all 31 districts in any plan added together can provide a comparative measure of the compactness of the districts. The shorter the overall length of the total of the perimeters of all 31 districts in a plan, the more compact is that plan.

93. Exhibit 14 to this affidavit, shows a comparison of the proposed plans by this simple measure of compactness. According to Exhibit 14, the plan with the most compact districts is the Wells plan. The Wells plan does not have zero deviation,

however, nor does it provide any minority control districts.

94. It makes no sense to compare a zero deviation plan like the Special Master's with plans that have significant deviation. Compactness necessarily must suffer as a result of adjustments made for zero deviation. In any event, among the plans, the Master's plan is more compact than any other in Long Island. In New York City, compactness must be sacrificed to the creation of appropriate minority districts, yet the Special Master's New York City districts are more compact than any of the other zero deviation plans. The Senate Majority plan is slightly more compact than the Master's plan in the Upstate region, but it is still less compact overall than the Master's plan.

95. Judged by the eyeball test, a study of all of the maps shows that the Special

Master's districts are largely free of the contortions and strange configurations that appear in most of the other zero deviation plans. Those unusual constructions that do appear in the Special Master's districts are all the result of the need for zero deviation, compliance with the Voting Rights Act, or a desire to avoid splitting local jurisdictions.

96. The Master's plan was constructed with another goal that is related to compactness. When parts of a district in the Master's plan are separated by waterbodies, they are connected by a bridge, tunnel, or regular ferry. If this rule is not followed, then the district is not really contiguous. It is unclear whether the other plans followed this principle.

97. Another consideration is the extent to which the various plans divide counties, municipal and civil divisions, and voting tabulation districts (see Exhibit 15). Among the zero deviation plans that comply with the Voting Rights Act, the Master's plan does the best job overall of avoiding division in local jurisdictions. The Senate Majority plan divides one fewer county, but creates several more municipal/civil divisions. The Assembly Majority plan has a rate of division of local jurisdictions similar to that of the Master's plan.

98. The Master's plan is more conscientious in dividing jurisdictions only once. In drawing districts, the Master's plan applied a specific rule that a town or municipality should be divided only once, if at all. The Special Master followed this rule consistently except in

New York City where the Voting Rights Act and the large size of the five boroughs makes compliance difficult.

99. Yet another districting goal is maintaining the integrity of communities of interest, which is related to compactness and preserving the integrity of jurisdictional lines. The discussion that follows attempts to provide information about the extent to which this goal is achieved in the Master's plan.

DETAILED DESCRIPTION OF MASTER'S PLAN IN COMPARISON TO OTHER PLANS

100. The Special Master initiated the districting process with the assumption that the commonalities between the various plans could serve as a basis for formulating his plan. A cursory examination of the plans immediately revealed that the plans had little in common. It was necessary, therefore, to

draw an original plan using the others for guidance only. The narrative below reveals that occasionally the Master's plan follows lines similar to those drawn in the Senate Majority and the Assembly Majority plans. The Master's plan also diverges from both. The district by district discussion below limits the comparison of the Master's plan to those two plans because of the practical difficulty of presenting a narrative reviewing all of the plans submitted to the Court. In any event, most of the other plans are slight variations of the Senate or Assembly Majority plans.

101. Districting in the City of New York was particularly difficult because the mosaic of different ethnic, racial, linguistic, and cultural groups is complex. Therefore, special advice was sought from Esther Fuchs, Ph.D. Dr. Fuchs

is an expert on the politics of New York City, and the multitude of communities living within it. The New York City districting process was completed under my direction -- and with Dr. Fuchs' counsel -- by James Ford, who is a Master of Public Administration graduate student at Columbia University. The curriculum vitae for both of these individuals are attached as Exhibits C and D of the Appendix in Support of the Report and Recommendations of the Special Master.

102. The description of the districts in the Master's plan, and the rationale for the construction of each, begins with the State's western edge (Buffalo) and proceeds eastward. Then, before going into a detailed description of the New York City districts, the Long Island districts are discussed.

103. The Master's plan CD 31 forms a backwards "C" around the outskirts of the City of Buffalo. It encompasses that part of Erie County that is not in CD 30 (Buffalo), and is connected to the closest counties that could be added without increasing the district over the ideal population size (the counties of Chautauqua and Cattaraugus). This combination of counties forms a compact unit in the westernmost part of the State.

104. The Special Master's CD 30 encompasses the entire City of Buffalo. Historically, Buffalo has been a single district and has been similarly treated in the Master's plan. Buffalo possesses a community of interest that should be considered. Middle-sized cities are burdened by special problems and possess distinct political cultures that

differentiate these urban areas from the rural areas that surround them.

105. CD 29 encompasses the northwestern part of the State including the Niagara area, which is comprised of Niagara, Orleans and Wyoming counties. CD 19 was designed to include areas outside CD 27, which encompasses all of the City of Rochester and its immediate vicinity. Again, the Special Master's objective was to segment a small urban district from the more rural parts of the surrounding area. Several of these rural counties were associated with each other in various arrangements in the 1970 and 1980 redistricting process, which suggests that historically, these communities share an affinity with each other. Both the Senate and the Assembly plans divide greater Rochester to create two districts, both of

which include urban and suburban populations.

106. CD 27 contains Rochester's urban district and was configured to intentionally maintain a compact area around the city. The Special Master removed the town of Perinton from the Monroe County (Rochester) district in order to obtain zero deviation.

107. The Assembly plan divides Buffalo into two districts. According to the sponsors of this plan, this division was made to separate the African-American community in Buffalo (which constitutes 15 percent of the VAP in the Special Master's Buffalo district) from the Hispanics in that city (who constitute less than 3 percent VAP). In the Assembly plan, the northwest part of Buffalo is combined with other towns in Erie and Niagara counties. The balance of Buffalo is combined with

other parts of Erie County. The Assembly plan then creates a large District 31, which extends from Chautauqua County on the southwest to Chemung County on the southeast (both of these counties are on the Pennsylvania border). It then extends north to the Canadian border. The Assembly plan places most of the Rochester area together in District 31, but then creates another district to encompass that city, and then extends to within a few miles of the Pennsylvania border. The Assembly plan's Buffalo districts, therefore, are significantly less compact than those in the Master's plan.

108. The Senate plan unifies the City of Buffalo, but divides Rochester. Senate CD 28 stretches thinly along the Canadian border from Niagara to the southern part of Rochester. The northern part of Rochester is connected to Wayne County and

then runs south through Seneca County. The Senate plan creates a second tier district just south of CD 27 and 28. This CD 29 includes portions of six counties: Erie, Orleans, Genessee, Wyoming, Livingston and Ontario. The Senate plan creates a third tier district (CD 31) along the Pennsylvania border from Chautauqua County to Tioga County. This consists of three long, thin districts -- a configuration that is less compact than the Master's plan.

109. CD 28 is one of two central southern districts in the Master's plan. It encompasses the counties of Allegany, Steuben, Chemung, Schuyler, Yates, Seneca, Cayuga and parts of Ontario and Tompkins. The Master's plan divides the vast stretches of this area into relatively square configurations in contrast to the narrow configurations contained in other

plans. Thus the Master's plan has neither districts that stretch from Pennsylvania to Canada nor any that stretch along the entire southern border.

110. Wayne and Onondaga counties form the foundation of the Special Master's CD 26. The City of Syracuse constitutes this district's main population center. Although these two counties were not paired in the 1970 or 1980 plans, the match forms a compact unit containing the ideal population. In contrast, the Senate plan's CD 26 places Onondaga County with Cayuga County and pieces of other counties, while the Assembly plan creates an equally irregular District 25 comprised of Oswego, Onondaga and Cayuga counties.

111. The second south central district in the Master's plan, CD 25, stretches from Delaware to Madison and from Otsego to Tioga counties (all or parts of seven

counties). Binghamton is the largest urban area in this mostly rural part of the State. The Senate and Assembly plans also create districts in this central portion of the State. However, the Master plan's CD 25 is slightly more compact than the Senate plan's CD 25 and significantly more compact than the Assembly plan's CD 23.

112. The extensive and sparsely populated northern part of the State, which begins in Lewis County and extends north beyond the Adirondacks, comprised a single district in the 1970 and 1980 plans. The Master's plan retains this configuration in CD 24, but includes Oswego County (Oswego was placed in the northern district in the 1970 plan), to achieve a district of ideal size. The Special Master's CD 24 splits Herkimer County north and south to preserve the mountain

areas as one unit. Both the Senate and the Assembly draw a variation of this northern district and both label it CD 24.

113. CD 23 is the least symmetrically shaped Upstate district in the Master's plan. It stretches from Oneida County on the west to Washington County on the east. It includes the counties of Oneida, Fulton, Montgomery, Saratoga, Washington and the southern part of Herkimer. Although Washington County is separated from the rest of this district by the Hudson River, several bridges span the river in this district. Neither the Senate nor the Assembly plans creates districts parallel to the CD 23 configuration offered by the Master's plan.

114. The Master's plan follows tradition by providing a Capital Area around Albany (CD 22). Both Albany and Rensselaer

counties are divided to join the urban areas of those counties in this district. Again, many bridges span the Hudson River in this vicinity. Senate CD 22 divides the Albany area and includes parts of several counties south of Albany. The Assembly's CD 21 is similar to the Special Master's CD 22 but less compact.

115. The Special Master's CD 21 lies south of the Capital area, stretching south from Schoharie and parts of Rensselaer County to Dutchess County, to encompass Greene, Columbia and Ulster counties. Several bridges span the Hudson River in the middle of the district. Various configurations of these counties were included in the 1970 and 1980 plans. Both the Senate and the Assembly plans draw a long thin district from Warren County on the North to parts of Dutchess County, following the Hudson River (both

called CD 23). The Master plan's configuration is more compact.

116. The Special Master's CD 20 is a compact area to the southwest of Ulster County. In Rockland County this district divides to attain zero deviation. Both the Senate and the Assembly plans have designed similarly situated districts to include Ulster County, CD 21 and CD 26, respectively. Instead of extending south to Orange and Rockland counties, however, their districts extend west in different irregular configurations to Tompkins County.

117. CD 19 in the Master's plan consists primarily of suburban Rockland and Westchester counties. To attain population equality, town lines in the south were split.

118. That portion of Westchester County that is not included in CD 19 is divided

into two districts in the Master's plan. His District 15 is comprised of all of the predominantly African-American areas in Westchester County, and is connected to parts of the Bronx and Harlem containing significant African-American VAPs. This formation was intended to give the African-American population of Westchester County the opportunity to elect candidates of their choice, which they have not had heretofore in congressional elections.

119. The Special Master's District 15 consists of non-Hispanic White areas of southern Westchester, which then connect with non-Hispanic White areas in New York City. The City of Rye and its immediate vicinity remain intact in CD 19. The Assembly plan tied parts of Westchester County with Putnam County and with parts of Orange and Dutchess counties (CD 19). The Senate plan places other parts of

Westchester County with Putnam County and with parts of Dutchess County (CD 19). The Master's plan holds suburban areas north of New York City together to the extent that it does not interfere with achieving zero deviation.

120. The Master's plan follows the tradition of identifying the extreme eastern portion of Long Island as CD 1. The districting lines for CD 1 in the Master's plan are approximately the same as the lines drawn in the Assembly and Senate plans.

121. CD 2 is a configuration similar to the Senate and Assembly plans; however, in the Master's plan, the district is slightly more compact.

122. Greater variation exists between the plans in their arrangement of CD 3, 4, and 5 on western Long Island. In the Master's plan, the African-American population of

Nassau County is included in CD 5 to enhance the voting power of the African-American majority in the abutting portions of Queens County. The remaining parts of Nassau County are divided in a most compact way to form CD 3 and CD 4 in the Master's plan. In the Assembly and Senate plans, the African-American population of Nassau County is separated from the African-American population of the City of New York. I believe this fracturing of minority population decreases the ability of both Nassau and Queens County African-Americans to elect candidates of their choice.

OVERVIEW OF THE DISTRICTING PROCESS FOR NEW YORK CITY

123. The Master's plan for the City of New York includes parts of three districts (5, 15, 18) and all of eleven districts

(6, 7, 8, 9, 10, 11, 12, 13, 14, 16 and 17).

124. The fact that the City of New York has substantial racial and language minority populations generally, and that three of its counties (New York, Kings and Bronx) are covered jurisdictions within the meaning of section 5 of the Voting Rights Act, gives rise to special considerations in the drawing of Congressional districts for the City. The Master's plan includes seven districts drawn to give voting control to racial and language minorities. These districts were drawn in conformity with the districting criteria described in the paragraphs above.

125. Demographic data for New York City suggests that the Special Master could construct four districts with African-American VAPs of at least 55 percent and

three districts with Hispanic VAPs at the same levels. The Asian voting age population, while geographically concentrated, is not large enough to create a district affording Asian voting control. As a general rule, the Special Master's districting decisions were intended to enhance the minority group VAPs in the minority control districts that could be drawn. The Special Master also gave special attention to preventing minority groups from competing with one another in the same district, and avoided drawing districts that give control to one minority but then include non-Hispanic White VAPs in excess of 30 percent, except in special circumstances.

126. The Special Master's first step in shaping minority group control districts in New York City was the identification of areas in which racial and language

minority populations are concentrated. Using shaded maps supplied by the Task Force, the Special Master determined that there were sufficient concentration of Hispanics and African-Americans in Northern Manhattan, Central Bronx, Jackson Heights Queens, and southern Westchester County to enable the drawing of one African-American district, and two Hispanic districts with minority VAPs of greater than 55 percent, without creating competition between those groups. The Special Master's African-American district in this defined area unites the African-American concentration beginning in Central Harlem and running north to southern Westchester County. The two Hispanic districts were then formed by drawing a western district in Washington Heights and the Bronx, and an eastern

district made up of East Harlem, Southern Bronx and Jackson Heights.

127. Once these districts were drawn, the next task was the creation of a third Hispanic district. The remaining Hispanic concentration regions are located in southern Manhattan, parts of Brooklyn, and east central Queens. Uniting these areas in the most direct way possible, without diluting or competing with significant African-American populations in these areas, produced a third Hispanic district.

128. The drawing of this third Hispanic district separated Brooklyn Heights and the non-Hispanic portion of Williamsburg from the rest of Brooklyn. These communities, which are linked to Manhattan by bridges, were included in a district that otherwise encompasses part of Manhattan.

129. Manhattan was divided along an east-west line, roughly as it had been in the redistricting plan that followed the 1980 census. The need to create districts of equal population required the joinder of a portion of eastern Manhattan with a district in Queens. Another Queens district was created in the area north of the third Hispanic district in the plan, to which the central Greenpoint area of Brooklyn was added.

130. South of the third Hispanic district, Kings, Queens and Richmond counties contain sufficient population to create approximately four and one-half districts. One district drawn in the Master's plan is a non-Hispanic White majority district encompassing Richmond County and adjacent populations of Kings County sufficient to create a district of ideal size.

131. The remainder of Kings County and southern Queens County has sufficient population to create two strong African-American districts, one substantially non-Hispanic White district, and one African-American influence district. The Special Master decided to create a third majority African-American district from this influence district by uniting the African-American population of central Hempstead in Nassau County with the African-American concentrations of east Queens County.

132. The Special Master also decided that the two African-American districts of central Brooklyn and southwest Queens should be drawn to attempt to keep distinct neighborhoods intact. The community of Bedford-Stuyvesant was placed in one district, and East New York and Flatbush are included in the other.

133. The remaining district running between Brooklyn and Queens would link the communities that ring Jamaica Bay.

134. Finally, the Special Master decided that a non-Hispanic White majority district would be drawn north of Jamaica in Queens County to incorporate the Throgs Neck peninsula of Bronx County.

DESCRIPTION OF NEW YORK CITY DISTRICTS

135. CD 18 is the Master's plan was drawn to unify certain towns in the southern suburban tier of Westchester County with certain of the northernmost neighborhoods of New York City, all of which have low concentrations of racial and language minorities. CD 18 includes Riverdale, City Island and other neighborhoods in Bronx County.

136. CD 15 in the Master's plan joins several Westchester County neighborhoods with African-American VAPs of more than 50

percent with several Bronx County African-American neighborhoods. CD 15 continues south through the Bronx and joins central Harlem by the Third Avenue Bridge. This district departs from the criterion of preserving the integrity of county and borough lines to create another African-American voting district with low Hispanic and non-Hispanic White VAP percentages.

137. The Special Master's CD 14 consists of the several west central Bronx neighborhoods and the entire northwestern end of New York County south to, but not including, Columbia University. CD 14 also includes the Hispanic community of the Upper West Side from 100th to 110th Street. It has a strong Hispanic VAP of 59.30 percent, which is achieved without sacrificing compactness. The Hispanic population of this district includes a significant number of immigrants from the

Dominican Republic. CD 14 has no incumbent. The combination of elevated levels of immigrant population, which might have low voter registration and turnout, and an open Congressional seat prompted the decision to draw this seat with the highest Hispanic VAP percentage possible.

138. CD 16 in the Master's plan consists of contiguous portions of Bronx, New York and Queens counties. The Bronx County areas include the region between the Bronx River and Westchester Creek. The New York county portion consists of Spanish Harlem as far south as East 96th Street. In Queens County, CD 14 includes the Hispanic areas of Corona and Jackson Heights. CD 16 has a high Hispanic VAP of 58.25 percent. A significant majority of the Hispanic population of CD 16 is Puerto Rican.

139. The area covered by the Special Master's CD 9, 14, 15, 16 and 18 is roughly comparable to the areas covered by CD 5, 7, 14, 15, 16 and 18 in the State Assembly plan, and by CDs 14, 16, 17 and 18 in the Senate plan. The Assembly plan draws two compact districts in this area (CDs 15 and 16) with non-White majorities. The Hispanic and African-American VAP percentages for these two districts, however, suggest that these two groups could be in competition for registration in those districts. See Exhibit 2. In addition, the Assembly plan does not include the substantial African-American populations of Westchester County in any district giving control to a minority group.

140. The Senate plan has divided the Hispanic and African-American communities into three districts, CDs 14, 16 and 17.

Senate CD 14 has an Hispanic VAP of 54.91 percent. While this is a significant Hispanic concentration, it is not strong enough to create the likelihood of the election of an Hispanic Member of Congress, particularly in this open district. Senate CD 17 has an Hispanic VAP of 52.67 percent. Again, this district is likely to be an Hispanic influence district at best. Senate CD 16 has an African-American VAP of 52.67 percent, an Hispanic VAP of 18.74 percent and a non-Hispanic White VAP of 21.36 percent. While this district compares favorably with CD 14 in the Master's plan (see Exhibit 2), the Senate sacrifices compactness and continuity to achieve this. The Senate in CD 16 creates an extremely narrow connection between Harlem and central Bronx to the northern community of Williamsbridge. Moreover,

both the Assembly and Senate plans join the majority non-Hispanic White and physically isolated Roosevelt Island to non-White districts. All factors considered, the Master's plan for these districts is superior to the other plans.

141. CD 17 of the Master's plan includes roughly the Western half of New York County south of 110th Street, the Kings County neighborhood of Brooklyn Heights, and the non-Hispanic White portion of Williamsburg. There is a significant population of Asian-Americans in the Chinatown region of this district (approximately 55,000, with a VAP of 11.15 percent in CD 17).

142. The Special Master's CD 12 is the western shore of Queens County, Roosevelt Island, and the eastern portion of Manhattan. In New York County, CD 12 lies entirely to the east of the CD 17 line,

roughly south of 96th Street, and north of Houston Street. The Queens County neighborhoods in this district are those lying directly across the East River: Astoria and Long Island City.

143. The Master's plan, the Assembly plan, and the Senate plan all effectively separate the Hispanic and African-American northern half of Manhattan from the overwhelmingly non-Hispanic White southern half and add non-Hispanic White populations from the northern shore of Brooklyn. Measured by the criteria of compactness and neighborhood integrity, however, the Master's plan for these areas is superior to the Assembly and Senate plans. Assembly plan CD 14 runs north on the West Side of Manhattan and follows a very narrow strip of land less than 100 feet wide between the Henry Hudson Parkway and the Hudson River to Inwood Park.

There, the Assembly plan separates Inwood Park from the Washington Heights neighborhood, and then continues into Bronx County to the eastern edge of Van Cortlandt Park. The Assembly plan for southern Manhattan (CD 12) creates a district that is equally sinuous. Starting south of CD 14, the district crosses the East River once to connect Northern Williamsburg and Greenpoint, and then crosses again to the south to connect southern Manhattan to Brooklyn Heights. From there, Assembly plan CD 12 follows the piers along South Brooklyn and Sunset Park to turn inward and connect the neighborhoods of Borough Park and Coney Island. Clearly, the Special Master's plan is more compact, and keeps neighborhoods in the same region closer together. The Senate plan likewise divides southern Manhattan and then uses

all manner of "bridges" and "chimneys" to reach sufficient numbers to create its CD 8, although its CD 15 is entirely in New York County. In contrast to these plans, the Master's plan does not sacrifice compactness unless necessary to draw a majority Hispanic or African-American district, which necessarily affects adjoining non-Hispanic White districts. 144. The third Hispanic district in the Master's plan is CD 10. It consists of rather geographically dispersed Hispanic neighborhoods in southwestern Brooklyn, Manhattan and Queens. These neighborhoods have never been joined in a single district. The Senate and Assembly plans also create geographically dispersed districts in these areas. The Senate and Assembly plans, however, incorporate the Hispanic areas of Jackson Heights, which the Special Master placed in one of the

Bronx County Hispanic districts, but omit the Hispanic population of Jamaica in Queens County.

145. In Brooklyn, the concentration of African-Americans is sufficient to draw two African-American majority districts. The Master's plan creates these two districts. CD 8 contains the entire Bedford-Stuyvesant community. CD 7 contains the neighborhoods of East New York and Flatbush. The Senate and Assembly plans both create two majority African-American districts in this area (CD 10 and CD 11 in the Assembly plan and CD 9 and CD 10 in the Senate plan). Both plans, however, split the Bedford-Stuyvesant community into two districts.

146. The fourth African-American district created in the Master's plan is CD 5 in Queens and Nassau counties. A Queens/Nassau district is necessary

because Long Island, outside of New York City, does not have sufficient population to create five complete districts. The Special Master chose to unite the 86,000 African-Americans in certain Nassau County villages with the African-Americans in the neighboring Queens County area. The Special Master produces the only plan that places the Nassau County African-Americans within a district with a majority African-American VAP percentage.

147. CD 6 of the Master's plan unifies the Southern portion of Brooklyn and Queens counties. CD 6 consists of the non-Hispanic White neighborhoods ringing Jamaica Bay. The Senate and Assembly plan districts (CD 11 and CDs 9 and 12, respectively) divide this area and incorporate neighborhoods as far away as Forest Hills, Queens and midtown Manhattan.

148. In the Master's plan, CD 13 incorporates Richmond County and the two adjacent Kings County neighborhoods of Bensonhurst and Bay Ridge, which are reached by the Verrazano Bridge. The Assembly and Senate Majority plans do not differ significantly in this area.

149. The remaining New York City districts in the Master's plan are comprised of the non-Hispanic White neighborhoods of central and eastern Queens (CD 9 and CD 11). The Assembly Majority plan unites non-Hispanic White populations in eastern Queens with Nassau, Bronx and Westchester counties. The Senate plan draws two contorted districts, having placed central Queens in a district with Jamaica Bay.

CONCLUSION

150. In my professional opinion:

1. The Master's plan achieves zero population deviation.

2. The Master's plan is superior to any other plan available to the Special Master for his review in recognizing concentrations of minority citizens and attempting to provide them an equal opportunity to influence the political process and elect candidates of their choice.

3. The Master's plan provides more politically competitive districts than any of the 31-district plans available to the Special Master for review, because it treats incumbents of both parties fairly. The Assembly and Senate Majority

plans had detectable partisan differences in the treatment of incumbents.

4. Except for decisions made to provide for zero deviation or to comply with the Voting Rights Act, the Special Master's districts are as compact or more compact than the other plans and divide fewer jurisdictional lines.

151. The data analyzed here are of the kind that are usually relied upon by experts in this field to render opinions on the nature of legislative and congressional districts.

152. I am more than 18 years of age and fully competent to testify to the things and matters herein stated.

This is the 26th day of May, 1992.

/s/Theodore S. Arrington
THEODORE S. ARRINGTON, PH.D.

Sworn to and subscribed before me

this the 26th day of May, 1992.

/s/Stephen McElhennon

NOTARY PUBLIC

My commission expires: _____

Stephen McElhennon
Notary Public, State of New York
No. 01MC964731
Qualified in Nassau County
Commission Expires July 29, 1993